Comments of 21st Century Fox, CBS Corporation, and The Walt Disney Company in Response to the House Energy & Commerce Committee's White Paper on the Market for Video Content and Distribution

Thank you for the opportunity to comment on your most recent white paper: the market for video content and distribution. We look forward to working with the Committee as it proceeds with its consideration of potential updates to the Communications Act.

We are living in what critics from the *Wall Street Journal*, the *New York Times*, the *Washington Post*, and numerous other publications have dubbed the "Golden Age of Television." Not only is the quality of the video content being created today at an unparalleled level, the means of video distribution currently available has made consumer access to that content more convenient than ever. While we welcome the Committee's interest in examining the video market, we urge you to proceed cautiously in making legislative or regulatory changes. Creating quality content is expensive and risky. The programming market has never been more competitive, where 30 years ago we faced competition for viewers from just a handful of networks, today we compete against hundreds. And they are pretty good at it too: Just this month Amazon and Netflix won Golden Globe awards for programming they produced. Increased restrictions on our ability to authorize the terms of distribution of our content could endanger the continued success of this market and adversely affect American consumers.

As companies principally involved in the creation of high-quality video content, we are continually looking for ways to better reach our consumers. Over the past decade, we have seen an unprecedented pace of change in the technology available to serve them. Our companies have been actively involved to drive the pace of evolution in the means of distributing video content. We want our viewers to have convenient and timely access to our content. Today, we deliver programming over multiple platforms, to multiple devices, using a variety of business models. Our content is available through broadcast, cable, and satellite television; digital downloads; authenticated streaming apps (TV Everywhere); online streaming; and subscription streaming services.

In just the past few months, several programmers, including CBS and HBO, have announced plans to offer online access to content directly to consumers. Fox announced late last year that linear programming from its owned-and-operated TV stations and cable networks would be available through Sony's Playstation Vue platform, a new cloud-based over-the-top video service. Moreover, in the time since this white paper was released, DISH announced plans to offer Sling TV, an over-the-top streaming service that will include ESPN and ESPN2, among other programming. We are continually working with distributors to negotiate innovative agreements that take advantage of new technology and business models. We caution the Committee to be wary of unintended consequences that could result from legislative or regulatory efforts to intervene in a regime largely governed by privately negotiated carriage agreements, which have led to ever-expanding options for consumers.

The common thread that runs through our use of all of the various technologies described above is that each allows us to provide additional value to consumers, and in turn, each facilitates our ability to achieve a return on our investment in quality programming. That return on investment then helps fund further program development. In our business, we take significant risk by investing in a costly product for which there is no guarantee of success. The white paper accurately states that "broadcast network programming remains an expensive and risky investment." The same is true of *non*-broadcast programming. Content creators often spend multiple billions of dollars per year programming a single channel. As a policy matter, given the significant risk and expense inherent in producing great content, it is critical that we continue to be permitted to freely negotiate the terms for the distribution of our content, including price, decisions over packaging of channels and decisions over whether to work with particular distributors.

We believe that much of the current legal regime for video distribution is working well for both consumers and programmers. Rather than seeking to "balance" consumer welfare and the rights of content creators, we urge the Committee to recognize that these two objectives are directly aligned. When Congress protects the rights of content creators, these parties invest more resources in both the creation and dissemination of the kind of high-value content consumers want, and consumer welfare is increased.

For example, the model of compensating local broadcasters for carriage by MVPDs is working for American consumers. The lion's share of the most watched programs on television are consistently found on broadcast television. Local stations are also able to provide outstanding local news and coverage of emergency events, such as severe weather. While we may believe that some of the existing obligations on broadcasters could be reduced, we also recognize that these obligations, coupled with similar rules that apply to certain distributors, are intended to work together to benefit consumers. Moreover, Congress has already taken steps to address concerns raised by distributors. Just last month, Congress enacted satellite legislation that included what both the American Cable Association and the satellite companies called "important reforms" to federal laws governing the video marketplace.

With respect to online content, including over-the-top services, we submit that the market for the provision of content to consumers online is intensely competitive, and there is no market failure, or other sustainable basis, that would warrant Commission regulation of on-line content. According to a survey conducted by Internet services company, Netcraft, there were more than 600 million websites on the Internet as of March 2012. According to the Motion Picture Association of America, there are now "over 400 unique online services around the world delivering full length feature films and TV shows, 100 of which are available in the United States." We do not believe that the Federal Communications Commission should be permitted to exercise boundless regulatory authority over every aspect of the internet. And we certainly do not believe that authority extends to mandating or regulation of content distribution on the Internet.

Thank you again for the opportunity to comment.

ABC4EXPLORE, INC
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Tel # 202.415.4472
abc4explore@yahoo.com

Dear Members of the House Energy and Commerce Committee:

With regard to your effort to review the regulatory policy for video, I offer my perspective as an independent video creator. I create wildlife and underwater footage for high definition television and 5K digital cinema. I have won two Emmys for my cinematography and have created over 100 wildlife films. My work is featured on National Geographic's "Great Migrations" Discovery Channel's "Shark Week" and "Animal Planet", and on ABC, NBC, CBS, and FOX.

By filming king cobra snakes, killer whales, great white sharks, polar bears, and other predators in an innovative and unorthodox way, my goal is to to push the boundaries of wildlife filmmaking and shed light on the hidden lives of the planet's most feared and misunderstood creatures. I build my own cameras and use advanced filming techniques such as super-slow-motion, high-speed, thermal-infrared, night-vision, and remote-control. My mission is to inspire people to care about our planet and its vanishing wildlife.

The Internet enables many ways to distribute my films and footage. America's broadband policy to date is largely successful to ensure that Americans get access to the Internet. When consumers purchase more

advanced televisions and devices, they can take advantage of increasingly higher broadband speeds, rendering my films in ever more beautiful quality. Making a quality wildlife film has some similarity to building a private broadband network; both require high upfront cost and considerable risk. There is no guarantee that market actors will buy the product. As such, there need to be viable business models both for wildlife films and broadband networks. Given these realities, it makes no sense to turn innovative communication networks into government-run utilities.

As an independent video professional, it's important to me to have strong copyright protections and the freedom to negotiate with different video market actors on an equal playing field. However the current Communications Act tips the balance in favor of some actors over others. To the extent that Congress can update the Act so that it provides a level playing field would best serve the interests of all Americans. I risk my life to capture these images to inspire the world - this is my livelihood - my life - and it should be protected.

Sincerely,

Andy Brandy Casagrande IV
President / Filmmaker
ABC4Explore, Inc & ABC4Films

REGULATION OF THE MARKET FOR VIDEO CONTENT AND DISTRIBUTION

QUESTIONS FOR STAKEHOLDER COMMENT

RESPONSES OF THE AMERICAN CABLE ASSOCIATION
January 23, 2015

Introduction

The American Cable Association (ACA) has approximately 800 members who have built advanced communications networks providing cable, broadband, voice, and other services in urban, suburban, and rural areas throughout the United States. The ACA membership includes mid-sized cable operators serving denser areas, smaller cable operators serving more rural areas, rural telecommunications carriers, and municipal utilities. No member has more than one million video subscribers, and the median number of video subscribers per member is 1,060.

For the provision of video service, ACA members as a whole pass nearly 19 million homes and serve approximately 7 million consumers – of which 5.4 million are served by members who compete with other cable operators. In the less dense small cities and rural areas, ACA members have built networks passing some 8 million homes, covering nearly 20 percent of the population in these areas.

Cable operators are subject to many provisions of the Communications Act of 1934, as amended, and most especially to two pieces of major legislation -- the Cable Communications Policy Act of 1984 (1984 Act) and the Cable Consumer Protection and Competition Act of 1992 (1992 Act). The 1984 Act largely established the relationship between cable operators and local franchising authorities and ushered in the rapid growth of the cable industry throughout the country. Cable operators went from passing only about 30 percent of homes in 1980 to passing about 90 percent by the end of the decade.

The 1992 Act, in contrast, focused on concerns about the market power of the largest cable operators, many of whom owned or controlled video programming assets. First, the authors of this Act were concerned that these large cable operators had obtained excessive leverage in local video distribution markets and were harming consumers by raising rates beyond competitive levels and failing to provide adequate consumer service. Second, the authors were concerned that these large operators had obtained control over key video content and were thwarting entry and competition by other distributors of multichannel video programming, such as direct broadcast satellite (DBS) operators, and access to their networks by other content providers. To address these issues, the Act regulated basic and expanded basic cable rates. It also created a category of video providers called multichannel video programming distributors (MVPDs), which included cable operators, and enabled them and their buying groups to have rights of access to content controlled by vertically integrated cable operators on non-discriminatory terms. Furthermore, it gave independent programmers the right to seek carriage on cable systems on a non-discriminatory basis. The legislation also granted over-the-air television broadcasters the right to seek monetary compensation from cable operators for the retransmission of their free-to-

air signals and guaranteed their carriage on a basic tier of service available to all customers of a cable operator.

Content and distribution markets have changed greatly since Congress enacted the 1992 Act. There is now intense competition in the MVPD market, as first DBS operators like DirecTV and Dish, and then many wireline telephone companies, such as Verizon and AT&T, entered. Today, the majority of consumers have a choice of at least four facilities-based MVPDs. Moreover, online video delivery services, like Netflix, Amazon, and Hulu, whose services ride on the broadband Internet platform of cable operators, local telephone companies and wireless providers, have entered the market. In sum, since passage of the 1992 Act, the competitive dynamic in the video distribution market has changed dramatically, going from control by the largest cable operators to vibrant competition.

While the distribution markets have become intensely competitive, content markets have seen significant consolidation. As a result, video programmers, especially television broadcasters and those controlling sports content, have obtained excessive bargaining leverage over competing MVPDs, who "must have" their content to remain competitive. This market dynamic results in consumers paying inflated prices for content, including programming they would prefer to exclude from their service package, if such an option were available.

There is substantial evidence of this problem. In the market for retransmission consent, fees are rapidly escalating, and consumers suffer from blackouts. In the sports programming market, networks press for ever-increasing carriage fees and demand placement on the MVPD's basic tier. Finally, MVPDs that own or control programming charge their competitors higher programming prices. In each of these situations, cable operators, particularly smaller operators, face a dilemma: either "eat" these increases or pass them on to subscribers. Neither alternative is sustainable, and neither serves the public interest.

While provisions of the 1992 Act that protect MVPDs from anticompetitive practices by programmers, such as the program access rules, remain important in today's market, the advent of competition among MVPDs and other video distributors effectively eliminates a key premise of the 1992 Act – lack of choice among distributors at the local level. Accordingly, many provisions are no longer relevant, and some are blatantly unreasonable, skewing the market where no intervention is warranted. This is perhaps best exemplified by the 1992 Act's rate regulation provisions and provisions favoring the rights of television broadcasters and other content providers over those of MVPDs, which are being employed to enhance broadcaster and programmer bargaining leverage and increase carriage fees far in excess of the rate of inflation.

The harms caused by the 1992 Act's outdated regulations are greatly magnified for ACA's independent cable operators and their subscribers. The 1992 Act was aimed at the largest, and in particular, the large vertically integrated, cable operators – not the small and mid-sized operators that make up the ACA membership and own no or little video programming. Yet, ACA members have had to comply with provisions that sought to control undue market power they did not possess and that granted unwarranted rights to far larger broadcast and other content owners. These harms to ACA's members have increased as the leverage of broadcasters and programmers has grown. As a result, ACA members today live with numerous, outdated, unbalanced and inappropriately applied regulatory burdens. For consumers served by ACA

members, the results are predictable: higher prices for video content and subscription video service. Moreover, in recent years, these consumers are finding they are "under the thumbs" of content providers even when they subscribe only to Internet access service, as these providers leverage their power over MVPDs to restrict and even block access to their websites by Internet customers of these MVPDs.

The authors of the 1984 and 1992 Acts focused on fixing the identifiable, significant harms to consumers, competition, and investment of those eras. It is now evident that key provisions in those laws tangibly and significantly harm ACA members, including by increasing the power of content providers whose appetite for extracting higher fees and limiting consumer choice only grows each year. ACA submits Congress needs to address and fix these problems now so its members can provide subscribers with services at competitive prices.

Responses to Questions

1. Question: Broadcasters face a host of regulations based on their status as a "public trustee."

> *a. Does the public trustee model still make sense in the current communications marketplace?*

The public trustee spectrum use model is outmoded, particularly in its application to broadcasters. With the advent of increased competition in the video distribution market, the "quid pro quo" of benefits and regulatory obligations is badly skewed in the broadcasters' favor. That is, broadcasters have numerous privileges, including their use of prime spectrum at virtually no cost and entitlements to be carried in preferred tiers by MVPDs; yet, broadcasters have few significant requirements to serve the public interest. This lopsided bestowing of privileges without significant public interest benefits must be revisited and rebalanced.

> *b. Which specific obligations in law and regulation should be changed to address changes in the marketplace?*

Consistent with the response to (a), at least the following laws/regulations should be modified or eliminated: requiring television broadcasters to be carried on the basic tier of MVPDs and the right of retransmission consent.

> *c. How can the Communications Act foster broadcasting in the 21st century? What changes in law will promote a market in which broadcasting can compete with subscription video services?*

See responses above.

d. Are the local market rules still necessary to protect localism? What other mechanisms could promote both localism and competition? Alternatively, what changes could be made to the current local market rules to improve consumer outcomes?

To promote localism and competition, television networks and local stations must be prohibited from interfering with the exercise of retransmission consent by stations willing to grant out-of-market carriage and with MVPDs willing to enter into agreements to carry these stations. In some cases, these signals, which are technically considered "distant" according to Nielsen-defined designated market areas (DMAs), may actually be geographically closer to the viewer than the in-market station, and therefore provide more relevant weather information, which is particularly important during weather emergencies. In other cases, the out-of-market station might provide the viewer with more extensive coverage of their in-state news, particularly their in-state political news, than the signals deemed "local" to the DMA, which may cross state boundaries and may even predominantly include counties from a neighboring state. Broadcast networks and local stations have increasingly denied MVPDs the right to carry of distant or "out-of-market" signals, which in turn denies their customers the right to view them. These practices which undermine localism and competition must be curbed.

2. Question: Cable services are governed largely by the 1992 Cable Act, a law passed when cable represented a near monopoly in subscription video.

a. How have market conditions changed the assumptions that form the foundation of the Cable Act? What changes to the Cable Act should be made in recognition of the market?

As discussed in the Introduction, the premise underlying the 1992 Act — that the largest cable operators possess undue market power with respect to video programmers, including broadcast stations in local distribution markets — no longer holds. Today, most consumers have a choice of at least four MVPDs, and they are increasingly accessing a plethora of video content online. Moreover, the 1992 Act failed to recognize that small and mid-sized independent cable operators did not possess the same degree of leverage; yet, for the past two decades, they have been shackled with most of the same requirements as their far larger and more economically powerful counterparts. Accordingly, in enacting new legislation, Congress should eliminate provisions giving broadcasters and other content providers preferred access to cable systems, including: the requirement that cable operators carry television broadcast stations on the lowest-priced (basic) tier; must carry requirements; and leased access requirements. These requirements are based on the outdated and incorrect presumption that cable operators have undue market power with respect to video programmers in video distribution markets.

However, substantial consolidation in the video programming and broadcast sectors requires that some provisions of the Act be maintained and others strengthened to ensure that competition and consumers are not harmed. For example, the program access rules must not be eliminated or weakened. These rules ensuring that MVPDs have access to programming owned by dominant providers of video service remain warranted. To address market changes, including the effects of broadcast consolidation, Congress should eliminate retransmission consent provisions that increase the bargaining leverage of broadcasters in negotiations and consider other changes to better protect consumers and competition. As discussed above, network-affiliated television

broadcast stations are extracting outsized retransmission consent fees from MVPDs, particularly smaller MVPDs and forcing blackouts, practices that show no sign of abating.

> *b. Cable systems are required to provide access to their distribution platform in a variety of ways, including program access, leased access channels, and PEG channels. Are these provisions warranted in the era of the Internet?*

Mandated carriage requirements of any sort imposed on MVPDs, like must carry and leased access, are not warranted because competition in the video distribution market is vibrant and entry barriers, particularly for content distributed over-the-top, are low.

3. Question: Satellite television providers are currently regulated under law and regulation specific to their technology, despite the fact that they compete directly with cable. What changes can be made in the Communications Act (and other statutes) to reduce disparate treatment of competing technologies?

To enable greater competition and as a matter of equity, all "technology" categories of MVPDs, including satellite television providers and non-cable MVPDs, should be generally subject to the same regulatory requirements. However, MVPDs that own programming may be subject to additional regulatory requirements to ensure competition is not reduced. To this end, Congress should broaden the application of the program access rules from only cable to any MVPD. Of course, there may be unique "technical" requirements that may need to be imposed on particular categories of MVPDs, *e.g.* spectrum transmission or signal leakage requirements, but the baseline should be regulatory parity for providers that compete.

4. Question: The relationship between content and distributors consumes much of the debate on video services.

> *a. What changes to the existing rules that govern these relationships should be considered to reflect the modern market for content?*

The premise of the 1992 Act was that the largest cable operators had undue market power in distribution markets, which they could use to harm content providers. As discussed above, the balance of power in the marketplace has changed dramatically in the past two decades as intense distribution competition has taken hold, and the broadcasting and video programming sectors have significantly consolidated. Today, major video programmers, including the four national broadcast networks, several of whom also own national and regional cable programming networks, have excessive leverage in negotiations because they are sole source vendors of their content to multiple and often competing distributors of multichannel video programming services. Moreover, for small and mid-sized cable operators, who were not the source of the problems giving rise to the 1992 Act, it is the content providers that possess undue leverage today. This is reflected in numerous ways, including the fact that small and mid-sized operators pay fees for content that far exceed fees paid by larger MVPDs, that these fees are increasing much faster than the rate of inflation, and that they are forced by content providers to accept and bundle content subscribers do not want. ACA therefore submits that Congress should eliminate the requirements imposed on small and mid-sized independent cable operators that mandate

carriage of any content, including by placing it on preferred tiers or by endorsing retransmission consent as it exists. In addition, Congress should direct the FCC to examine anticompetitive practices of content providers, including practices that lock small and medium-sized independent cable operators into "forced" bundles (*e.g*. by directly mandating the content of programming packages or by indirectly establishing minimum or maximum penetration levels for certain types of content) and that block access to content by broadband Internet-only subscribers.

b. How should the Communications Act balance consumer welfare with the rights of content creators?

First, consumer welfare is maximized where markets are vibrantly competitive. As discussed, content providers have undue leverage over small and mid-sized independent cable operators, which in turn harms their subscribers. Any new legislation should address this concern. Second, consumer should be able to use technological innovations that enable expanded access to content they have legitimately acquired. Content that is illegitimately acquired should be subject to the full force of government prosecution.

5. Question: Over-the-top video services are not addressed in the current Communications Act. How should the Act treat these services? What are the consequences for competition and innovation if they are subjected to the legacy rules for MVPDs?

The first question Congress should ask when advances in technology create opportunities for new entry into older markets like the MVPD market is whether to relieve incumbent providers of their regulatory obligations because competition will serve the public interest better than regulation. In other words, Congress should seek to regulate down, rather than regulate up in the face of new entry. Should Congress determine that regulatory intervention is warranted for OTT video providers to further the public interest, including by giving them some of the rights provided MVPDs, it should also examine what obligations must be borne by OTT providers in return. In doing so, Congress should account for the circumstances under which the Communications Act provides rights to and imposes responsibilities on MVPDs, with whom OTT providers may compete. Congress must also recognize affording OTT providers rights similar to cable operators without imposing similar public interest obligations would be market-distorting and unfair. Further, there must be a recognition of three fundamental facts: (i) the multichannel video distribution market is already highly competitive; (ii) OTT providers are not a struggling infant industry in need of some additional benefit; and (iii) government assistance for OTT providers is not necessary to materially increase competitive options in the market. Rather, OTTs have been delivering service successfully for some time and continue to grow with no demonstrable barriers to entry. In fact, many are affiliated with the largest national and global content providers, or other large, well-financed corporations that dwarf the reach and market capitalization of nearly every small and medium-sized MVPD. Congress should give OTT providers special rights only where they are demonstrably needed to solve particular problems in the market, and none are evident today.

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Public, Educational, and Governmental Access Television
Serving Chautauqua, Mayville, North Harmony, Portland, Ripley, Sherman and Westfield

January 19, 2015

The Honorable Fred Upton
2183 Rayburn House Office Building
Washington, DC 20515

The Honorable Greg Walden
2185 Rayburn House Office Building
Washington, DC 20515

Re: Regulation of the Market for Video Content and Distribution - Response to White Paper #6

Gentlemen:

I write today to express my concerns regarding the need for Public, Educational and Public (PEG) access television stations on cable television systems. Our access facility has aired over 2,865 locally-produced programs since we began operations in 1995. While we have recently started making our programs available via the Internet, we view this method as a supplement to distribution, certainly not a replacement. I do not know of any television programmer that has abandoned cable/satellite distribution in favor of Internet delivery.

Additionally, satellite providers should be required to distribute PEG channels, similarly as is done for local broadcast stations.

PEG access is the only real effective way to distribute hyper-local programming to a community. It is important to the community and to community leaders.

Very truly yours,

[redacted]

Charles L. Kelsey
Executive Director

ACCESS FRAMINGHAM
CONNECTING YOUR COMMUNITY

31 Flagg Dr.
Framingham, MA 01702
508-875-5434

January 22, 2015

The Honorable Fred Upton
2183 Rayburn House Office Building
Washington, DC 20515

The Honorable Greg Walden
2185 Rayburn House Office Building
Washington, DC 20515

Re: Regulation of the Market for Video Content and Distribution – Response to White Paper #6

I write this letter to share with you and your committee some information about the role that PEG Access plays here in Framingham, Massachusetts by promoting localism, and by offering educational opportunities and unique content that would otherwise be unavailable to many people in our community.

Access Framingham (AF-TV) is a 501(c)(3) nonprofit organization providing public access programming and training in the Town of Framingham, Massachusetts. We provide more than 400 hours per year of first-run locally produced programming, in addition to approximately 400 hours of national/regional original programming requested by members of our community, programming not available on other local outlets. We carry programming seven days per week, 19 hours per day. This programming includes local news, political debates and discussions, youth sports, community arts and performances, religious programs, children's shows, veterans' programs, and health programs. During overnight and weekday afternoon hours, we carry the Talking Information Center Reading Service for the visually impaired, including specific scheduled programming for that community. Our programming is available on Comcast, RCN and Verizon to approximately 20,000 cable subscribers in the Town of Framingham, plus additional households in nearby communities on Verizon FIOS.

In the past year, because of critical provisions requiring cable systems to offer PEG Access for the benefit of their subscribers, Access Framingham has been able to spearhead many important local initiatives.:

- Nearly forty programs focused on local election content premiered between March and the first Tuesday in November, ranging from candidate debates, to ballot question forums, to half-hour in-depth interviews with candidates for local, state, and federal office. In addition, AF-TV produced two half-hour interviews in which outgoing Governor Deval Patrick focused squarely on issues of most import to Framingham, and his memories of serving this region.

- AF-TV entered into a partnership with the Framingham Public Schools to provide management, technical, and training support for Framingham High School's TV Production studio, students, and faculty. This was in addition to our already extensive work with middle and high school students in the Framingham Schools, the local vocational high school, and the local Catholic high school… providing after school programs, summer camps, and internships during the school year and during the summer.
- AF-TV partnered with the Framingham Rotary Club on a fundraising auction, not only helping showcase items up for bid, but, more importantly, spotlighting the work done by Rotary and the many charitable organizations supported by Rotary through its Community Grant program.

We work to connect the people of this community to their government (including not just Town Hall, but the Library, the Senior Center, and public safety departments), to social service agencies like the United Way and the South Middlesex Opportunity Council, to local cultural resources like the Framingham History Center and the Danforth Museum, to faith-based communities like the Temple Beth Am Brotherhood and the Interfaith Clergy Association. With a truly multi-generational focus, Access Framingham serves as an important informational resource for folks of all ages in our Town. This content-rich resource provides depth of local coverage abandoned by network affiliates, local radio, and community newspapers. Much of this work is dependent upon our status as a PEG Access provider, with a hyper-local focus on a hyper-local television channel.

Thank you for your attention, and please let me know if I can provide any further information.

Sincerely,

William McColgan
Executive Director

cc: Rep. Katherine Clark, Massachusetts
Mike Wassenaar, President, Alliance for Community Media
William Rabkin, President, Framingham Public Access Corporation.
Sen. Elizabeth Warren, Massachusetts
Sen. Ed Markey, Massachusetts

[redacted]

From: Sean McLaughlin [redacted]
Sent: Friday, January 23, 2015 3:12 PM
To: CommActUpdate
Cc: Ferree, Logan; Driscoll, John; Mike Wassenaar
Subject: Regulation of the Market for Video Content and Distribution – Response to White Paper #6

January 23, 2015

The Honorable Fred Upton
2183 Rayburn House Office Building
Washington, DC 20515

The Honorable Greg Walden
2185 Rayburn House Office Building
Washington, DC 20515

Sent via Email to: commactupdate@mail.house.gov

Re: **Regulation of the Market for Video Content and Distribution – Response to White Paper #6**

Need to Preserve Media Localism

Dear Representatives Upton and Walden:

Local community media builds upon foundations created by federal, state, and local video franchising provisions that require our privately held commercial cable/video service providers to carry and support local non-commercial Public, Educational, and Governmental (PEG) access channels, and to provide support for local production and archiving resources that are both necessary and warranted. As digital media content migrates to other technology platforms (Internet protocol, etc.), we need to ensure that essential Local media resources are protected and secure to meet local needs and interests.

Among the three pillars of federal media policy - Diversity, Localism and Competition - community media and PEG access providers are the first line responders for Media Localism. This is true across diverse sectors of our community, including: public safety, public education, public health, public works, civic engagement, and economic development as well as disaster response and recovery.

Particularly in light of consolidated (increasingly absentee) ownership of broadcast stations, cable operators, satellite networks, and broadband providers (ISPs). PEG access media organizations like Access Humboldt are now the largest and most prolific providers of Local media content in the communities we serve. For Humboldt County and the North Coast region - we produce and distribute more Local content than every other radio/tv/cable outlet (commercial and non-commercial) in our County, combined.

Access Humboldt is a non-profit, community media organization formed in April 2006 by the County of Humboldt, California and the Cities of Eureka, Arcata, Fortuna, Rio Dell, Ferndale and Blue Lake to manage public benefits of the local cable franchise (now a State franchise). Local community media (PEG) resources of Access Humboldt include: five linear cable access TV channels; a developing wide area broadband network with dedicated optic fiber connections to twenty locations serving local government jurisdictions, educational institutions and other public facilities; broadband access wireless networks; a Community Media Archive collection online; a Community Media Center with studio and other production equipment and training on the Eureka High School campus; and ongoing

operational support for public, educational and governmental access media services from franchised cable operators - the largest in our County is Suddenlink Communications.

The fact that there are other, Internet-based ways to share video programming in no way diminishes the important role that PEG programming via cable television continues to play for the sector of the public that cannot afford broadband equipment and connectivity - and for others who are not online, including older and more culturally diverse populations. If cable distribution is no longer critical to PEG channels, why, then are broadcasters and commercial cable programmers not abandoning their cable channel slots in favor of Internet-only delivery? The real answer, of course, is that Internet delivery is a complement to, rather than a substitute for, cable channel delivery, especially when it comes to PEG channels.

In remote areas like the North Coast of California, access to local broadcast channels is limited, many people are beyond reach of cable services, and most TV programming is from distant non-local sources via satellite or online. PEG access programming, delivered both via cable and online is the last bastion and best future hope for true Localism in our broadband media marketplace. To ensure the survival of media localism, online distribution must surely be part of the future for community media and PEG access programming.

In the "Blueprint for Localism in Communications" the National Association of Telecommunication Officers and Advisors (NATOA) correctly said:

> "The convergence of communications technologies led by Internet Protocol and exponential growth of computing power is fundamentally transforming the communications industry. This transformation is taking place at a time of increasing industry consolidation and the concentration of political and economic power in the hands of a few incumbent providers. That in turn has led to deregulatory measures, laws and regulations that have the potential to be harmful to the interests of the public and local communities. At stake is local government's ability to ensure provision of important public benefits such as local consumer protection, support for multiple voices in media through Public, Education and Government ("PEG") programming, and regulation and compensation for the private use of public property, to name just a few. "

There is a real need to increase, rather than decrease support for Media Localism going forward. PEG media access centers and broadband media access services through other community anchors all provide constructive outlets for community youth to learn media skills and for seniors to actively create programming on a range of issues in their local community. PEG channels and other community-based broadband media outlets promote civic participation, educational opportunities and technology access for diverse communities across the nation.

We appreciate your careful consideration of these grassroots, community-based communication resources such as PEG media access, which are essential for us to meet the goal of universal access to open broadband networks. And we hope that you will work to defend them in the face of ongoing corporate consolidation of the cable and broadband industries.

Sincerely with Aloha,

Sean McLaughlin
Access Humboldt

c: Rep. Jared Huffman staff

_____

Sean McLaughlin
Executive Director
Access Humboldt
[redacted]

[redacted]

Visit our Website http://accesshumboldt.net
Follow us on Facebook http://www.facebook.com/accesshumboldt
and Twitter http://twitter.com/accesshumboldt

"Local Voices Through Community Media"

January 23, 2015

The Honorable Fred Upton
Chairman
Committee on Energy and Commerce
U.S. House of Representatives
2125 Rayburn House Office Building
Washington, DC 20515

The Honorable Greg Walden
Chairman
Subcommittee on Communications and Technology
Committee on Energy and Commerce
U.S. House of Representatives
2125 Rayburn House Office Building
Washington, DC 20515

Re: Call for comments on White Paper #6 – Regulation of the Market for Video Content and Distribution

Dear Chairman Upton and Chairman Walden:

On behalf of Aereo, Inc., I respectfully submit the following comments in response to the Committee's call for comments on its white paper titled "Regulation of the Market for Video Content and Distribution."

We appreciate the opportunity to submit our comments and applaud the Committee for its ongoing work to update and modernize our nation's telecommunications law to encourage robust competition and consumer choice in the video marketplace.

Please do not hesitate to contact us should you or your staff have any additional questions.

Respectfully submitted,

Virginia Lam Abrams
Senior Vice President, Communications and Government Relations
Aereo, Inc.

Background
In 2012, Aereo launched a groundbreaking technology that enabled consumers to access, via the Internet, an individual cloud-based antenna and DVR to record and watch live broadcast television. Over the course of the next two years, Aereo established facilities in 14 U.S. metropolitan areas and had publicly announced plans to roll out its system in up to 50 additional cities.

Shortly after Aereo's launch, the company was sued in the Southern District of New York by major broadcasters who claimed that consumer use of Aereo infringed their copyrights. The broadcasters were denied a preliminary injunction motion at the district court level and the Second Circuit Court of Appeals affirmed that decision. The broadcasters then petitioned for and were granted cert by the United States Supreme Court. In June 2014, the Supreme Court reversed the lower court ruling and determined that under copyright law a consumer's use of the Aereo individual remote antenna/DVR system to stream live television was effectively a cable system and, had such a system existed in 1976, Congress would have viewed its use as a public performance.

Shortly after the Supreme Court ruling, Aereo ceased all of its business operations in order to seek further legal and regulatory clarity. In November 2014, after determining that there was no longer a clear path forward and it could not remain financially viable, Aereo laid off most of its remaining staff and filed for Chapter 11 bankruptcy protection. The U.S. District Bankruptcy Court has approved an auction of Aereo's business assets for late February 2015.

Question posed: Over-the-top video services are not addressed in the current Communications Act. How should the Act treat these services? What are the consequences for competition and innovation if they are subjected to the legacy rules for MVPDs?

Late last year, Aereo publicly stated its support for the Federal Communications Commission's Notice of Proposed Rulemaking to define or construe "MVPD" to include a narrow category of internet-based services whose facilities deliver to subscribers linear channels of video programming such as local, over-the-air broadcast programming. We understand that process to be ongoing.

However, as the Committee continues to explore these important issues, we ask that you consider a regulatory framework that is technology-neutral and allows linear online video providers to compete in parity with incumbent providers.

Aereo's experience in the market has demonstrated that consumers want and will subscribe to a service that provides convenient access to local broadcast television programs via the Internet for a reasonable monthly fee.

Internet-based services appeal to so-called "cord-cutters" and a generation of "cord-never" consumers who cannot afford high-priced monthly bundled subscription packages. They also appeal to consumers looking to add convenient mobile access to their existing MVPD

subscriptions and personal recordings. We believe that characterizing linear streaming online video services as "MVPDs" would create important regulatory parity among systems that provide access to the same linear channels, increase investment, product innovation, and competition in the video programming market, and provide consumers with attractive competitive alternatives to existing MVPD services.

Meaningful competition from linear online video services will only emerge and develop into a sustainable alternative for consumers in a stable and certain regulatory environment, which will enable companies to attract the level of financial investment necessary to create substantive competition to incumbent providers.

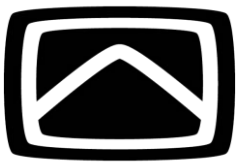
By using a technology-neutral approach in defining or construing "MVPDs" to include systems that transmit linear channels of video programming to consumers via the Internet, regulators have an opportunity to create lasting competition and encourage private investment in the video marketplace. Using a technology-neutral approach would level the playing field, removing artificial barriers to entry for new technologies, while preserving and protecting content owners' rights. Importantly, this approach would also secure to all MVPDs the right to engage in timely, good faith negotiations to license channels through retransmission consent.

Applying MVPD rules in a technology-neutral fashion would also ensure that the public interest continues to be served by requiring closed captioning, emergency alerts, equal opportunity employment, and carriage of educational, religious and other public interest programming. By creating more regulatory certainty in the video marketplace, the Committee can usher in a new age of competition and investment. Content creators will have more distribution platforms, innovative video products will emerge and most importantly, consumers will have more choice.

However, we believe that the definition of "MVPD" need not and should not cover online video services that offer consumers access to video programming in an on- demand or non-linear channel format. These types of services have successfully demonstrated their ability to operate and obtain necessary licenses without regulatory intervention.

We know that when our laws and regulations do not keep pace with technology, consumers are the ones who lose out. Aereo is a prime example of this. Even though Aereo itself has permanently ceased all business operations and will no longer exist, we believe that the lessons we learned have helped further the conversation around video reform and it is our hope that this will lead to a robust video marketplace for consumers for decades to come.

Thank you for your time and consideration.



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January 23, 2014

The Honorable Fred Upton
2183 Rayburn House Office Building
Washington, DC 20515

The Honorable Greg Walden
2185 Rayburn House Building
Washington, DC 20515

Sent via Email to: commactupdate@mail.house.gov

RE: REGULATION OF THE MARKET FOR VIDEO CONTENT AND DISTRIBUTION - RESPONSE TO WHITE PAPER #6

Dear Representatives Upton and Walden:

Unlike any other media in existence, including the latest siren song of the Internet, PEG Access TV is where the *principles of localism, diversity of viewpoint and true electronic democracy* thrive in a commercial free marketplace of ideas. This is participatory people's media unfiltered by corporate spin and is as fundamental to our republic as local newspapers once were. This fully local resource encourages participation between and among all ethnicities, allows all points of view to be expressed and provides value for all people irrespective of literacy and education levels. In its finest expression in hundreds of communities, it brings tolerance, cultural understanding and knowledge. It brings government and life long education closer to the people. Most importantly, it brings people closer to each other. Local Public Access, Community Radio and local Community Broadband efforts deserve the highest priority for funding and development from federal and state governments. If we allow only non-local legacy media giants like Time Warner and Disney and new communications behemoths like Facebook and Google dominate the media landscape, we will create a future where they will displace the local "electronic commons" we desperately need to give meaningful voice to the cultural, civic and economic life and character of real people in local communities all across America.

On behalf of the people of Maui, Hawaii, the only county in America with four rural islands separated by water, we strongly recommend that Congress continue to uphold the principles of

localism and diversity of viewpoint enshrined in current telecommunications law. We sincerely hope that your committee will recognize the importance of preserving and protecting Community Media in all of its iterations, including Public, Educational and Government Access Channels on cable and its technological successors.

Non-profit, non-commercial community access centers are essential to the health of a democratic society particularly in underserved areas with no local media representation. For a vast majority of our citizens in Hawaii, PEG centers provide resources people can use to actively participate in civic engagement, learn media literacy and acquire high quality media training. PEG facilities deliver essential lifeline services for free or at very low cost. These hands on experiences and on site media skills are not available on the Internet in libraries or in schools. On Maui, we provide successful face-to-face training and internships for hundreds of people and have received awards for training and employing disadvantaged and disabled members from our community. We give voice to a diverse, multi-cultural population not based on ability to pay and our nationally renowned youth programs are providing kids with jobs in new media.

Some people are of the opinion that the Internet can simply replace PEG, but in fact, our real world experience is proof that it cannot. Congress and the FCC realized at the dawning of the cable television era forty years ago, that marketplace forces were deficient in fully meeting local community communications needs. This is precisely the reason why they created PEG as an antidote to the oncoming cable monopoly. The vast concentration of corporate media ownership we see today has exacerbated the problem so much now that, in many markets, there are no competing marketplace forces in play at all. In most places there are few or no electronic media that can be characterized as representative of the communities in which their signals operate.

For these reasons and more, as technology develops, it is essential that the PEG community media paradigm extend to broadband as well. Our ability to communicate effectively with each other will only succeed if the fullest range of local community communications needs such as access to bandwidth, tools, skills and ideas on a fast, open internet are met for ALL residents at reasonable cost. PEG access centers already in place, will provide cost effective resources and tools to accomplish these goals, help to close the digital divide and bring digital literacy to all.

This is particularly important because our PEG center, Akaku, has been an early adopter of real world broadband applications. Not only were we the first media organization in Hawaii to stream video in the late nineties, we were also innovators in 2007 with the first live, simultaneous multicasts via radio, television and web broadcasts of events of public importance to the entire state. We were among the first in the nation to deploy live cellular bonding TV technology in 2011and continue to stream our channels via the Internet to the state and world at large. We were among the first in the nation to integrate live TV broadcasts with "Skype" technology and we provide our Maui Nui residents with one of the more successful and innovative new media and video training programs in the nation.

The issue of cable franchise fees and by extension, future broadband fees, universal service fees, or other fees being assessed for PEG 2.0 and other public interest use in exchange for the use of public rights of way is a fundamental tenet of U.S. Communications Law. This is the reason why we have public access channels on cable today. This local, non-commercial, non-corporate communications systems exist because the government intervened in the marketplace to charge monopoly cable companies "rent" for the use our airwaves and our public

property. Already in some jurisdictions, this fundamental right of local communities to express themselves through access to media has been severely eroded. We have seen diminishment of PEG access stations in several states fueled by a sophisticated lobbying campaign by media conglomerates such as AT&T, Comcast and Time Warner and there are state and local governments rolling back public interest obligations of cable and telephone companies under massive industry pressure and influence.

As Congress and the FCC have recognized, we will see new digital protocols for delivery of many services, which will require an adjustment to the current regulatory framework. For this reason we are asking Congress to step in and safeguard local non-commercial media's ability to communicate effectively in these new environments by providing specific baseline legislative language and media industry requirements for healthy PEG migration to broadband

We believe strongly that there is a place for non-commercial, fully local, community television, new media and high-speed Internet access as a natural extension of the PEG concept. We applaud your committee for contemplating legislation to this effect and believe that this initiative can go a long way toward bringing all Americans into a digitally inclusive future.

Respectfully,

Jay April
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[redacted]

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for Community Media

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January 23, 2015

The Honorable Fred Upton

2183 Rayburn House Office Building

Washington, DC 20515

The Honorable Greg Walden

2185 Rayburn House Office Building

Washington, DC 20515

Re: Regulation of the Market for Video Content and Distribution – Response to White Paper #6

Dear Chairman Upton and Chairman Walden,

I am writing on behalf of the members of the Alliance for Community Media, the non-profit trade association that represents over 3000 Public, Educational and Government (PEG) Access channels throughout the United States. Our membership is comprised of non-profits, local governments, school districts and other entities which operate PEG channels and provide a wide variety of local media services for communities across the United States, and other members concerned about the availability of local community programming.

Our organization and our members welcome the opportunity to provide information to the House Committee on Energy & Commerce about the value of PEG Access programming across the United States, and the continuing need for federal policy that supports PEG Access and promotes the goals of localism.

In White Paper #6, in Question 2b, the Committee asks:

> **Cable systems are required to provide access to their distribution platform in a variety of ways, including program access, leased access channels, and PEG channels. Are these provisions warranted in the era of the Internet?**

PEG Access channels and programming advance Congress' goal in the 1984 Cable Act of providing a wide diversity of information and services by responding to the unique needs and interests of each local community. The role of PEG Access in developing technology skills and media literacy has never been more important than today. PEG centers provide outlets for community youth to learn media and leadership skills. Seniors actively create programming on a range of issues. PEG channels provide an important outlet for small otherwise unserved or underserved portions of a community (such as foreign language speakers) to produce and watch programming responsive to their unique needs and interests. PEG channels give nonprofit organizations an outlet to reach clients in need of assistance. PEG channels allow religious organizations to do outreach in communities and express their faith. PEG channels furnish a platform for civic debate to resolve local conflicts. PEG channels give citizens the opportunity to monitor the actions of their local government. And during local elections, PEG channels provide opportunities for candidates to address the public directly, without being limited to a 30-second sound bite.

Thousands of hours of new, original programming appear on PEG channels every day throughout the country, bringing uniquely local information into the home that would not otherwise be seen. PEG channels welcome community members, politicians, preachers, experts, educators, artists, and others. Participants on PEG channels are not screened or selected by corporate management or advertising interests; they participate because it's their community, and PEG channels are their channels, and because they have something to say and a community with which to connect.

The role of PEG channels is particularly important at a time when less than 0.5% of programming on commercial television media is devoted to local public affairs. The commitment of PEG programmers to promoting social services, arts and civic events, public safety, and other issues close to home, demonstrates what is possible when the community is given the opportunity to participate in the television medium. The democratic values that form the foundation of the PEG Access mission need to be preserved by government, industry, and individuals alike.

The quantity of uniquely local original programming that PEG provides to communities is substantial. A sampling performed by ACM in 2010 reveals that each year an average PEG Access provider ran 1,867 hours of first-run local programming on its PEG channel(s), or 35 hours a week – an impressive number that clearly demonstrates the robust amount of community involvement and the value that communities place on PEG.

Whether in an urban area, suburb or small town or village, PEG channels are focused 100% on the local communities they serve, cablecasting local events, town hall and council meetings, and school activities that rarely receive full coverage on commercial media or even on public broadcasting. Because of the variables in the number of PEG

channels operated in any specific jurisdiction, it is difficult to extrapolate nationwide, but ACM has estimated that PEG Access channels generate over 2.5 million hours of original local programming per year.

There are a number of statutory changes Congress should consider to preserve and strengthen the services provided by PEG Access programming. These would assure that PEG Access channels are not treated in an adverse manner as compared with other programming.

PEG Access Programming Should Have a Statutory Right to Carriage on DBS Systems.

In the Fifteenth Report on the status of video competition, the FCC reported to Congress that DBS accounts for 33.6 percent of MVPD subscribers. Local programming should be expanded to DBS platforms, not eliminated from cable. Satellite is not a nascent industry and is technically capable of inserting local broadcast channels. Satellite service should offer subscribers access to local PEG programming, either as must carry or similar to retransmission consent. Many DBS receivers now integrate broadband service received by the user from a different provider to enable video on demand features. A technical solution that allows local PEG programming to be viewable, either as Internet video stream, on-demand, or through a satellite transmission could be explored so that PEG programming is viewable to DBS subscribers using the same receiver and user experience in place for satellite programming.

Congress Should Eliminate the Distinction in the 1984 Cable Act Between Operating and Capital Support for PEG Access Programming.

In states that continue to support PEG programming through payments for PEG Access, the 1984 Cable Act distinction restricting the use of such payments is stifling program production and getting in the way of job creation. We estimate that in California alone, this outdated distinction results in at least $60 million dollars a year that non-profits and municipalities are forced to spend on capital costs, rather than operating costs for PEG programming and instruction. As a result, it is increasingly difficult to meet local needs. This cannot be what Congress intended. The distinction would be similar to a hospital that can purchase tools and equipment, but is restricted by the Federal government from hiring doctors and nurses with money that comes from consumers who actually pay for services. The California Legislature on an overwhelming and bi-partisan vote urged Congress to eliminate this provision in the past year, as has the U.S. Conference of Mayors.

PEG Access Programming Should Be Carried in Standard Definition (SD) and High Definition (HD).

In surveys of cable subscribers, an increasingly large proportion are HD subscribers; of these HD subscribers, a majority claim they never or rarely watch SD channels. Large retailers, such as Best Buy, no longer sell non-HD televisions. To be accessible and relevant to all cable subscribers, PEG programming needs to be carried in both SD and HD formats, as are the majority of national cable channels, until cable operators move all channels to HD formats. Other technical solutions to address bandwidth concerns, such as using broadband and IP video to enable viewing of PEG channels as part of cable converter features could also be explored, so long as the user is not required to additional steps view local PEG programs.

PEG Channel and Program Information Should Have Non-Discriminatory Access to Onscreen Cable System Guides.

If a cable operator provides channel, program, and accessibility information in an onscreen program guide for national commercial and local broadcast channels, then cable operators should be required to make similar information viewable in the onscreen guide for local PEG channels. Viewers increasingly use on screen program guides to search for programs and to record programs for DVR viewing. If local PEG programming is not identified in the onscreen guide, viewers cannot find programs or determine what local PEG program they are watching.

Cable operators should make PEG channel name, program names and information, and accessibility information (e.g., availability of closed captioning) viewable and audibly accessible in onscreen program guides as part of the Communications Video Accessibility Act. Seventy-seven comments representing 250 local PEG channels in twenty-three different states were filed with the FCC stating that those PEG Access channels provide closed captioned programming that is not identified as such by cable operators. In most cases, only nationally generic information, such "local programming" or "LOCL" or "municipal access" is provided. This issue remains consideration by the FCC in a Further Notice of Proposed Rulemaking, but Congress could act to address this issue as part of an update of the Communications Act.

PEG Access requirements remain relevant and important in the era of the Internet. Significant and important elements of the community that PEG Access serves do not have ready access to, or do not use, the Internet at this time. This is true in particular for those who cannot afford or otherwise have access to high speed broadband and for many seniors who are not Internet savvy. These are two groups that are a critical part of the PEG Access audience and that are relatively less important to commercial cable operators because advertisers care less about them than younger and more affluent viewers. If online delivery were an adequate substitute for other distribution platforms, then broadcasters and commercial cable programmers would have moved exclusively to online delivery over the Internet as well. They haven't and are not likely to do so in the foreseeable future because of the continued strength of multichannel video distribution.

We appreciate the opportunity to provide these comments to the Committee and would be pleased to provide any additional information the Committee wants. Thank you.

Yours Sincerely,

Mike Wassenaar

President

Alliance for Community Media

AMERICAN COMMUNITY TELEVISION

TO: U.S. House of Representatives
Committee on Energy & Commerce
Subcommittee on Communications & Technology

FROM: American Community Television
John Rocco, President, Board of Directors
Bunnie Riedel, Executive Director

Southeast Association of Telecommunications Officers and Advisors (SEATOA)

DATE: January 23, 2015

RE: Response to Sixth in a Series of White Papers Issued by the Committee in its Process of Reviewing the Communications Act for Update:

Regulation of the Market for Video Content and Distribution

American Community Television (ACT), the leading organization representing Public, Educational and Government Access ("PEG") is pleased to provide insight into the PEG community, for the Communications and Technology Subcommittee of the House Commerce Committee, to consider.

The SouthEast Association of Telecommunications Officers and Advisors (SEATOA) is a professional association composed of individuals and organizations serving citizens through city and county government and regional authorities in the states of Georgia, North Carolina, South Carolina, and Tennessee in the development, regulation, and administration of voice, video, data communications, broadband and PEG operations and information systems services. SEATOA is a Regional Chapter of the National Association of Telecommunications Officers and Advisors (NATOA).

Our response is to the following questions of the sixth series of the White Papers, specifically, the Regulation of the Market for Video Content and Distribution in regards to PEG:

2. Cable services are governed largely by the 1992 Cable Act, a law passed when cable represented a near monopoly in subscription video.
   a. How have market conditions changed the assumptions that form the foundation of the Cable Act? What changes to the Cable Act should be made in recognition of the market?
   b. Cable systems are required to provide access to their distribution platform in a variety of ways, including program access, leased access channels, and PEG channels. Are these provisions warranted in the era of the Internet?

a. We address the first question posed by the Committee, regarding how market conditions affect the assumptions underlying the Cable Act have changed, and how such changes should affect changes to the Cable Act, by addressing four critical key areas as follows.

1. PAYMENT FOR USE OF PUBLIC RIGHT OF WAYS IS NOT RELATED TO THE AMOUNT OF COMPETITION PRESENT IN THE MARKETPLACE

   Not all the terms and provisions that make up the 1992 Cable Act are intrinsically rooted to or even connected with market conditions of the time the Cable Act was passed into law. Providing wireline-based cable services requires a physical plant that necessarily must be built through publicly owned right of ways. This remains true whether or not there is one provider of cable services in a jurisdiction or many providers of cable services in that same service area. Regardless of the presence or lack of competition, all providers must pay to use the public right of ways.

   Further, service providers must pay for use of the public right of ways for the physical plant regardless of the underlying protocols, content or type of service that is carried over the physical plant.

   Thus, neither the presence or lack of competition or changing market conditions and evolving technology affect the need for continued standards for use and payment of right of ways to franchising jurisdictions, now and in an updated Telecommunications Act going forward.

2. WHETHER MARKET COMPETITION EXISTS AMONG WIRELINE VIDEO BUSINESSES SHOULD NOT BE THE BASIS FOR DETERMINING MANAGEMENT AND COMPENSATION FOR PUBLIC RIGHT OF WAYS

   Regardless of whether there is competition or not, the companies' use of public right of ways require both management and compensation. This is true irrespective of the number of providers serving a particular area. These same needs also exist through the evolving economies affecting the industry that underlie the ability of multiple providers to succeed in an area versus the forces that drive consolidation to fewer wireline providers.

   ACT wishes to address the notion that there is robust competition and no longer a "cable monopoly." Cable competition is a moving target. Certainly, there are places like New York City, Chicago, the District of Columbia, Northern Virginia or Southern Maryland, where there may be two or even three video providers and a choice of satellite providers, but that is not the case for the vast majority of this country. The great competitor, AT&T, has reached just over 6 million cable subscribers in the ten years since it decided to jump back into the video business, with most of these in wealthier suburbs because of a lack of build out requirements. And now, AT&T is vying to buy DirectTV and we speculate that they will move away from the wireline video delivery business soon after that deal is approved. Verizon is not robustly building throughout their telecommunications footprint because their installations were very expensive and they too have carefully chosen wealthier areas of the country. People who have a choice for cable over satellite will more often choose cable because of faster broadband speeds. And certainly, cable operators do

not overbuild one another, as we can see with the transactions, acquisitions and swaps that are currently going on between Comcast, Time Warner and Charter.

By and large, the American public is served by a monopoly of video providers and at best, a duopoly. ACT notes that the trend of cable companies consolidating can affect the ability of franchising authorities to obtain compensation for the fair value of their right of ways. Reducing the number of cable operators that serve increasingly larger percentages of the marketplace may provide the economies of scale they are seeking to maximize profits, but at the same time, such massive market power has the potential to be used to effectively force down the amount of compensation for use of the public right of ways, especially when leveraged against smaller or more rural franchising authorities. Thus, the changes to the market regarding consolidation and ownership provides additional support for retaining the Cable Act's franchising structure and specifying the minimum parameters for compensation to retain the integrity and value of the public's assets throughout the ebb and flow of market consolidation.

Further, while there is much talk about "Over the Top" and cord cutting, in order to receive these videos seamlessly, it requires the customer to have a fat pipe, in other words, broadband. And that more often than not it means subscribing to a cable operator, even if it's just for internet service.

Very importantly, scarcity of wireless spectrum will continue to be a significant factor, ensuring that wireline services will be vital and substantial capacity in the overall infrastructure for entertainment and communications services. Thus, there will continue to be an ongoing need for any future Cable Act updates to provide for compensation and use of public right of ways.

3. COMPENSATION FOR THE USE OF PUBLIC RIGHT OF WAYS IN THE FORM OF PEG CHANNELS AND SUPPORT PROVIDES SIGNIFICANT BENEFITS AND SHOULD BE RETAINED IN AN UPDATED CABLE ACT

The Cable Act provides for franchise fees and PEG as payment for use of public right of ways. At the time this was enacted, currently, and into the future, this approach provided, and continues to provide significant benefits that should be retained in an updated Cable Act.

A. Franchise Agreements and Compensation in the Form of PEG Support and Channels Provided the Foundation and Protection for Expansion of Cable Services

Market conditions when the Cable Act was first developed, and which continued when the Cable Act was updated in 1992 responded to cable companies need for regulations allowing the necessary foundation for building out and deploying cable plants.

The White Paper solicitation states "cable systems are required to provide access … including … PEG channels." As part of describing how the market conditions have changed, history provides a useful context. In the early 1980's, as Congress contemplated addressing cable regulation, to include PEG, cable companies actively sought government regulations that would allow cable operators to gain needed access

to public right-of-way in order to "string its wires" to deliver cable services. Leading up to the development of the first Cable Act, during the 1970s and 1980s—when cable operators were bidding to secure the initial cable franchises across the country—cable operators proposed such things as PEG access channels, funding and resources as a way to "sweeten the pot" for securing a franchise by demonstrating the benefits to the public that went beyond bringing a new consumer service to town. Bringing local city council meetings to the local citizens was seen as a value to the local elected officials and a valuable marketing tool for the cable companies to attract subscribers to their services. Subsequently, Congress recognized PEG as a valuable part of the overall compensation for the use of the public rights-of-way, paving the way for the then-nascent cable industry to become the robust industry we see today.

This protected access provided the basis for many innovations and advances in services provided over cable. In the 1980's we saw systems of 30 channels all in analog. We remember the first shows on channels like HBO and ESPN were Polka Dances and tractor pulls that have grown into wide ranging and robust entertainment programming content. In the1990's we saw the profound announcement by Dr. Malone that we would have 500 channels of video services in a digital world. In the late 1990's we saw the widespread introduction of cable modem services (initially considered a cable service subject to franchise fees but ruled in the *Brand X*[1] decision to be an information service not subject to franchise fees). Then, in the early 2000's we saw the widespread introduction of VoIP creating another service delivered over cable facilities. These innovations are all a result of the early protections afforded the nascent cable industry through a regulatory structure that protects the local community's (and taxpayers') public-rights-of-way.

Today, cable operators make billions of dollars in profits because of their protected access to the public rights-of-way. Cable operators pay a small token in franchise fees and PEG support as rent for use of those public-rights of way. Compensation is proscribed, and can only be derived from franchise fees derived from cable services—and not from other services (e.g. telephone-like VOIP, and internet), even though the wires for all of these services necessarily use the public right of ways. These payments are not actually borne by the cable operators, but instead, passed on (through) to cable subscribers. In essence, cable operators pay virtually nothing beyond the PEG channels and transmission of those channels for the privilege of using public property to earn their profits.

B. <u>The Cable Act Provides a Structured Process for Franchising and Using Public Right of Ways in Vastly Different Jurisdictions, and Parameters Allowing Appropriately Scaled Compensation for the Use of Public Right of Ways that Meets Community Needs Specific to Each Jurisdiction in Diverse Areas of the Country</u>

Cable systems, and all of the services provided on those systems, must continue to use the public right of ways. Thus, going forward, there is a continued need for a system that designates the parameters for compensation for use of right of ways, and for managing the process for obtaining and using public right of ways.

[1] *National Cable & Telecommunications Assn. v. Brand X Internet Services,* 545 U.S. 967 (2005).

Franchise agreements continue to provide the essential business parameters serving both the cable providers and the franchising authorities. Both the cable providers and the franchising authorities benefit from having a predictable, structured means for securing use of public right of ways which a franchising authority cannot unreasonably deny, and the compensation is structured as scaled to each particular franchising jurisdiction, so the value of the right of ways are commensurate with the area served.

The process of franchising at the local level currently operates in thirty-eight states. Communities ascertain their community needs when renewing their franchise agreements, including the needs of the community with respect to PEG obligations. Each community is different so there is no "one size fits all formula" as a result of the ascertainment (or needs assessment) process. These community differences are significant when it comes to having PEG channels and the level at which they will be supported—and thus, tailoring compensation to the specific jurisdiction. Based on the current Cable Act, from jurisdiction to jurisdiction, compensation for use of New York city's right of ways will be automatically scaled differently than compensation for right of ways in Salina, Kansas. Based on community needs, Salina's cable needs will be different than another town's, for instance, Janesville, Wisconsin or Waukegan, Illinois.

As with utilities, the compensation for use of right of ways (with cable, in the form of PEG obligations) are passed on to customers, or in this case, the cable subscribers. Local elected officials are constrained by the parameters set forth in the Cable Act for establishing compensation for use of the public right of ways. At the same time, these local elected officials sit in a unique position of listening to the community needs and balancing those needs against the costs to their constituents.

Again operating within the parameters of the franchising and compensation structure of the Cable Act, a similar approach is employed in the remaining states that now operate within State franchising statutes. This combination of the structure and compensation parameters provided by the Cable Act, along with this local assessment and balancing of community needs has ensured deployment of cable facilities for cable and other services, provides a structured process for franchising and using public right of ways in vastly different jurisdictions, and provides parameters allowing appropriately scaled compensation for the use of public right of ways that meets community needs specific to each jurisdiction in diverse areas of the country.

C. PEG Channels and Support as Compensation for Use of Public Right of Ways Provides Significant Benefits that Should be Retained in an Updated Cable Act.

The Cable Act specifies that if a franchising authority wants the compensation for use of its public right of ways in the form of PEG channels and support, that cable providers are required to provide it in accordance with the parameters set forth in the Act. This was not an arbitrary designation by Congress. In accord with Congress' intent, PEG was then, and is still today a "free speech" platform, a platform for government transparency, and a platform for educational information and expanded opportunity.

That this "rent" for use of the public right of ways to operate a private business also serves the function of meeting public interest needs is an excellent way of protecting the public's assets while serving critical public communication needs. In an updated Cable Act, the benefits that accrue from PEG channels and support as compensation for use of public right of ways should be retained.

The historical narrative of the Cable Act of 1984 states:

> *Public access channels are often the video equivalent of the speaker's soap box or the electronic parallel to the printed leaflet. They provide groups and individuals who generally have not had access to the electronic media with the opportunity to become sources of information in the electronic marketplace of ideas. PEG channels also contribute to an informed citizenry by bringing local schools into the home, and by showing the public local government at work.*

The need for this programming is no less relevant and critical today than it was at its inception and codification into our legal framework. If anything, the need is greater now as consolidation of media has lessened the number of owners and primary controllers of the editorial control in the video, print and radio industries.
PEG provides for full editorial control by the operators of the PEG channels and fully locally-focused programming in an era where these are otherwise entirely non-existent in major media platforms that reach into every home in every part of the country.

Thus, compensation for the use of public right of ways in the form of PEG channels and support provides significant benefits beyond the limitations afforded by a financial transaction that does not include PEG channels and should be retained in an updated Cable Act.

4. PEG CHANNELS AND SUPPORT AS COMPENSATION FOR USE OF RIGHT OF WAYS SHOULD APPLY TO ALL WIRELINE FACILITIES THAT CARRY MULTI-CHANNEL VIDEO PROGRAMMING

Changes in market conditions have given rise to questions about what services are cable services and subject to PEG obligations in franchising. ACT's position is that if it looks like cable subscription programming from the perspective of the subscriber, and uses facilities in the public right of ways for transmission to the subscriber, the use of public right of ways should be franchised with PEG channels and support as compensation, regardless of whether the system plant and the programmer are the same entity or not, and regardless of what form of transmission is used (e.g. linear, IP-based, bit-streamed, or any other approach).

Wireline facilities that use public right of ways are no longer limited to providing one kind of service, for example, telephone or cable. In fact, most wireline facilities provide a range of services including voice, internet and video programming. Currently, since cable operators are adding services to their franchised cable plant, there have been few questions

about whether a cable franchise is required with PEG obligations. However, if a new wireline plant is built as a network that only carries internet service upon start-up, but later adds video programming subcontracted from another company (or companies) that provides multichannel scheduled video cable programming, and then operates a multi-channel video subscription service over that facility, it should be clear that such a system must be franchised as a cable system and provide compensation for use of right of ways in the form of PEG channels and support.[2] Failure to make this distinction clear could result in a large loophole to bypass the franchising structure and compensation parameters of the Cable Act, including avoiding PEG obligations.

Another way failing to make this distinction could occur is in newly emerging cable-type services provided by Over the Top video providers, which are in every respect the same as cable subscription services. Currently to be franchised as a cable operator, PEG obligations apply to only to multi-channel video providers (MVPD). Under current FCC rules, an MVPD has been defined only as a facilities-based provider; a video programmer that provides multiple channels of prescheduled programming but does not have or control its transmission facilities is not considered an MVPD for purposes of franchising. [3]

Additionally, while the type of "wire" (e.g. fiber, coax) does not raise questions about the definition of what video services should be franchised as cable services, the format and approach to delivery over various wireline facilities raises questions that need to be addressed going forward.[4] With all video programming being transmitted digitally, the use of internet protocols as the underlying transmission does not change the fact that the programming itself is a subscription video service being provided by a multi-channel video provider (MVPD), and is subject to franchising and PEG obligations.

ACT seeks to ensure that the wireline facilities that carry multi-channel scheduled video programming are franchised and franchising authorities are compensated with PEG support and channels, regardless of technology or transmission.

b. We address the second question posed by the Committee, regarding whether access to cable operators' distribution platform in the form of PEG channels continues to be warranted in the era of the Internet as follows:

1. <u>THE INTERNET IS ONLY A SUPPLEMENT TO FURTHER ENGAGING COMMUNITIES WITH PEG CHANNELS</u>

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[2] As an example, see the Google Fiber arrangement in Portland, Oregon.

[3] This question is being addressed by the Federal Communications Commission in MB Docket 14-261 "Promoting Innovation and Competition in Multichannel Video Programming Distribution Service", (addressing questions first raised in NCTV v. Sky Angel, affecting Over the Top Video multichannel video providers where the FCC found having and controlling delivery of a facilities-based transmission path was necessary to be a multichannel video provider (MVPD)). A critical question is whether it continues to make sense that MVPDs are only defined as such if they are facilities-based providers. The FCC is proposing a technology neutral MVPD definition that would bring their rules into sync with the realities of the current marketplace and consumer preferences where video is no longer tied to a certain transmission technology. This would include redefining 'linear' online video providers (OVD) as multichannel video providers (MVPD), the same as cable and satellite operators are currently defined. ('Linear' is a lineup of prescheduled programming, as distinct from an on-demand service for individual programs.)

[4] AT&T has taken the position that although they are a facilities-based MVPD, that because their cable programming is delivered using internet protocols, that they are exempt from cable franchising provisions.

The need for locally-produced, locally-focused public, educational and government programming on television as a "free speech" platform, a platform for government transparency, and a platform for educational opportunity is no less relevant and critical today than it was at its inception. At the core of its success, and continued success in an updated Cable Act is the presence of PEG programming on cable television channels.

Television programming reaches into homes in a manner that is very different from the way programming is found and accessed through broadband-based services, including Over-the-Top video services. Ninety seven percent of homes own at least one television, and the average time spent watching television each day is almost 5 hours per day with time spent watching television versus other platforms continuing to increase for all ages.[5] Over the top and other new viewing platforms are no match for cable television; even though they are in development, they still capture only a very small percentage of all viewers[6] with cable subscriptions continuing to grow[7], and according to one industry analyst, "are taking shape in a landscape known for changing very slowly. It's like turning a supertanker while you are rebuilding it. It takes a long time to take new platforms from first in market trials to fully-realized revenue-generating ecosystems."[8]

Just like other broadcast and cable channels, to reach their viewers, PEG channels are defined dial locations, and like the other channels, are branded and devoted to local content. In contrast, YouTube internet videos are a "white noise" of content, with 100 hours of video being uploaded to YouTube every minute and 80% of YouTube traffic coming from outside the US.[9] Even if entertaining, it is certainly time-consuming and ineffective to search for content, and unlike television channels, viewers must know what they are searching for, taking the time spent to sorting out the millions of possibilities. Although also true of Internet videos, PEG provides for full editorial control by the operators of the PEG channels. However unlike the Internet, PEG channels are fully locally-focused programming in an era where such channels and programming are otherwise entirely non-existent in major media platforms that reach into homes in every part of the country. Some PEG channels are the *only* local programming in the area they serve. In every jurisdiction PEG is truly unique and distinct in television programming.

As with other television channels, PEG access organizations certainly use the internet as a supplement to make their programming more interactive. And as with other television or video media, we understand that we will lose audience share if we are relegated to purely an internet service. The television or video media use the internet to drive eyes to their channels and they use their channels to further engage television viewers by sending them to the internet as a "follow up" to viewing and to build viewer loyalty. This is no different for locally focused, community based PEG channels.

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[5] Nielsen 2014 Cross Platform Report http://www.nielsen.com/us/en/insights/reports/2014/shifts-in-viewing-the-cross-platform-report-q2-2014.html

[6] See FN 6.

[7] According to Deutsche Bank Securities, company reports, 2013.

[8] Bill Niemeyer, senior TDG advisor

[9] See Youtube website statistics at http://www.youtube.com/yt/press/statistics.html

In any update to the Cable Act, PEG channels should be retained as an important local resource continuing in the same spirit as Congress intended in establishing them in the first place.

2. PEG CHANNELS ARE CRITICAL LOCAL PROGRAMMING RESOURCES AND CHANNELS AND SHOULD CONTINUE TO BE PROTECTED

We find it curious that when cable operators wish to address PEG access television, they typically say we can just go to the internet, and that there is no need for the community to have a television channel. However, we find no evidence that the cable operators use this approach toward their commercial channels or even PBS. Why only PEG? Why not ESPN? Why not the Cartoon Network? Why not MSNBC or Fox News? Why not Russian News Network or China News Network or Aljazeera?

That the PEG channels are valuable is not in question. We do find evidence that when cable operators want to get rid of PEG channels, or render them ineffective, one strategy they use is by slamming the PEG channels into a "digital Siberia", to channels 960 and up, where viewers have difficulty finding their PEG programming, and in many cases, the cable operator has added the requirement for the subscriber extra to rent the box so they can see PEG channels—at an additional cost. And to make matters worse, the subscribers (by and large) are already paying a fee to receive those channels.

As illustration, in Northbridge, Massachusetts, Charter moved the PEG channels from 11, 12, 13 to 191, 192 and 194 without informing the PEG access operator. This action was a direct violation of the franchise agreement (see below) specifying those channels as the PEG dial locations and further, notice was not provided in accordance with Title XXII of the Massachusetts cable statute.

13.3 PEG Access Channels

The Licensee shall continue to make available to the Town and/or the Access Designee three (3) full-time Downstream Channels for PEG Access purposes on channels 11, 12 and 13. Said PEG Access Channels shall be used to transmit non-commercial PEG Access Programming to Subscribers without charge to the Town and/or to the Designee except external costs may be externalized and passed through to the extent permitted in accordance with FCC rules. Underwriting of the costs of access program production is permitted, provided the sponsors do not advertise on the programs. Underwriter acknowledgements similar to those appearing on public broadcast stations shall be permitted.

When the Northbridge Selectmen confronted Charter at its regular meeting, the Charter government relations person, Mr. Tom Cohan, admitted it was a mistake but Charter would not change the channels back.[10]

In the meeting, Mr. Cohan claimed that the move was necessary for the digital upgrade, and also states that the lower channel positions are not important. However, Charter replaced the PEG channels with QVC, Telemundo and NFL Network, in the 11, 12 and 13 dial locations. Two of these channels are important profit centers for Charter. If the lower channel positions were not important, why did Charter move them to the lower positions?

[10] The Selectmans' meeting is available on YouTube at http://www.youtube.com/watch?v=DZdhea-vigI&feature=youtu.be

ACT submits these positions are important and that is why Charter slammed, in direct violation of the franchise agreement, the PEG channels off these lower positions.

This town of 15,000 has considered their options, and even while Charter is in breach of contract, the town is reluctant to enter into a legal battle with Charter, knowing the monetary resources it will take to force Charter to comply with the legal binding contract.

With the occurrences of the past few weeks, PEG access television operators have once again understood and affirmed their place in the video marketplace of ideas. We need look no further than the events recently in Paris, to appreciate the notion of free speech, our founder's gift to this country of the First Amendment and our sacred duty to protect that speech in all its forms.

Public access television has been the bastion of free speech in the television medium for almost 50 years. It is exactly what the creators of the Cable Acts of 1984 and 1992 envisioned. Government access television has also fulfilled its role, as was envisioned, by providing complete, utter and honest transparency, of the workings of our local government by the mere existence of cameras in council chambers (our local CSPAN). Educational access has provided countless opportunities for distance learning, after school homework assistance, all forms of educational programming, school board meetings and those daily school lunch reports, exactly as was envisioned.

Having Congress relegate PEG to an online-only service via federal legislation is inappropriate and will dramatically reduce or make entirely ineffective the free speech and community cultural platform, local educational programming and information, and the government transparency benefits of PEG access television which are so vital in our communities throughout the country, and to participation in our democratic goverance.

In any update to the Cable Act, PEG should continue to exist in the same format, same platforms and with the same ability for all viewers to find and use PEG channels as the broadcasters. ACT is not opposed to evolving with the technology and platforms of major media; in fact PEG centers embrace and use every possible opportunity to the advantage of serving their communities. However, PEG channels should be a part of the entire package of changes, and not singled out; when all other major channels (broadcasters, PBS, ESPN, HBO, CNN, etc.) migrate to a new platform or viewing experience, PEG will migrate along with them. If everything is going to migrate to an on-demand/DVR platform, PEG will easily migrate to that platform. But to single out PEG and relegate it to the Internet only would be unfair, detrimental to local communities and harmful to the values we cherish as a nation.

CONCLUSION

For all of the above reasons, ACT strongly encourages immediate passage of the soon to be introduced Community Access Preservation Act, to address current issues affecting PEG centers nationwide.

Further, in conclusion, ACT's response to the Committee's question regarding how market conditions affect the assumptions underlying the Cable Act have changed, and how such changes should affect changes to the Cable Act, is the following:

Cable wireline service providers must pay for use of the public right of ways for the physical plant regardless of the underlying protocols, content or type of service that is carried over the physical plant.

Neither the presence or lack of competition or changing market conditions and evolving technology affect the need for continued standards for use and payment of right of ways to franchising jurisdictions, now and in an updated Telecommunications Act going forward.

Scarcity of wireless spectrum will continue to be a significant factor, ensuring that wireline services will be vital and substantial capacity in the overall infrastructure for entertainment and communications services. Thus, there will continue to be an ongoing need for any future Cable Act updates to provide for compensation and use of public right of ways.

Compensation for the use of public right of ways in the form of PEG channels and support provides significant benefits beyond the limitations afforded by a financial transaction that does not include PEG channels, and should be retained in an updated Cable Act.

In addressing the second question posed by the Committee, regarding whether access to cable operators' distribution platform in the form of PEG channels continues to be warranted in the era of the Internet, ACT further concludes:

The need for locally-produced, locally-focused public, educational and government programming on television as a "free speech" platform, a platform for government transparency, and a platform for educational opportunity is no less relevant and critical today than it was at its inception.

In any update to the Cable Act, PEG channels should be retained as an important local resource continuing in the same spirit as Congress intended in establishing them in the first place.

To single out PEG and relegate it to the Internet only would be unfair, detrimental to local communities and harmful to the values we cherish as a nation.

In any update to the Cable Act, PEG should continue to exist in the same format, same platforms and with the same ability for all viewers to find and use PEG channels as the broadcasters.

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American Public Power Association Responses to Questions in the Sixth White Paper Related to Video Content Distribution

The American Public Power Association (APPA) is pleased to respond to the questions raised by the House Energy & Commerce Committee's Communications & Technology Subcommittee as it considers the current laws governing the market for video content distribution as part of a possible rewrite of portions of the federal Communications Act. APPA urges the Committee to also view this as an important opportunity to consider remedies to some of the current and growing problems surrounding competitive access to broadcast and video programming.

Interest of APPA and Its Members

APPA is the national service organization representing the interests of over 2,000 community-owned, not-for-profit electric utilities. These utilities include state public power agencies, municipal electric utilities, and special utility districts that provide electricity and other services to over 47 million Americans, serving some of the nation's largest cities. The vast majority of APPA's members, however, serve communities with populations of 10,000 people or less.

Many of these utilities developed in communities that were literally left in the dark as electric companies in the private sector pursued more lucrative opportunities in larger population centers. Residents of these neglected or underserved communities banded together to create their own power systems, in recognition that electrification was critical to their economic development and quality of life. Currently, more than 100 public power systems provide cable television services, and many of these systems also provide high-speed broadband communications over state-of-the-art fiber-to-the-home networks.

Overview

APPA's comments focus on needed changes to current regulations governing access to broadcast programming through the retransmission consent process. The Communications Act's provisions governing retransmission consent and the Federal Communication Commission's (FCC or Commission) implementing regulations—which are now nearly two decades old—are severely outdated, causing harm to consumers, and counterproductive to the development of competition in the delivery of video programming. The market conditions and circumstances that gave rise to the retransmission consent rules and policies in 1992 no longer exist. The rules and regulations should therefore be updated to reflect the current realities of the video market.

The chief concern of Congress in enacting the retransmission consent rules in 1992 was the likelihood that monopoly cable companies would destroy competition from local over-the-air broadcasters. As a result of the expanding variety of video choices now available to consumers, the underlying concern leading to the retransmission consent rules—that a single multichannel video program distributor (MVPD) wielding monopoly power over broadcast distribution in each market threatened the existence of local broadcasters—can no longer be justified. At the same time, the bargaining power of broadcasters has substantially increased. Today, it is the broadcasters that are in a position of dominance, as evidenced by the fact that many routinely demand excessive retransmission consent fees and other concessions, while threatening to go dark if their demands are not met. Such threats are antithetical to the reason that Congress created the must carry/retransmission consent rules in the first place: to ensure that local

communities retain access to the "diversity of voices" and local programming that broadcasters have a public interest obligation to provide.

It has been the experience of APPA's members that the market-based mechanisms that Congress designed to govern retransmission consent negotiations are no longer working effectively. Abuses of the current retransmission consent rules are particularly harmful and burdensome for small new entrants, such as public communications providers. As a practical matter, these systems cannot succeed without carrying the major networks, and they lack the ability of their large incumbent multiple system operators (MSO) competitors to negotiate volume discounts or other concessions. As a result, public providers often have little choice but to pay a substantial premium for retransmission consent and pass that premium through to their rural and small-market subscribers. This puts them at a significant competitive disadvantage to larger MVPDs in their markets.

APPA members have increasingly faced unreasonable retransmission consent demands, dictated by broadcasters with little, if any, interest in constructive negotiation and mutual accommodation. Where members of APPA have found broadcasters in neighboring markets that were willing to provide alternative programming, the FCC's network non-duplication and syndicated exclusivity rules and the broadcasters' contracts with national broadcast networks often preclude alternative access to such programming—or even the threat of obtaining it.

While the Committee's questions focus on access to broadcast and video programming, it is important to consider the impact of the current abuses and unfair practices that occur in the retransmission consent and video programming access process in the broader context of the national goals of fostering greater broadband availability. The FCC has repeatedly recognized, most recently in the context of access to terrestrially delivered video programming, that

> [B]y impeding the ability of MVPDs to provide video service, unfair acts involving [video service] can also impede the ability of MVPDs to provide broadband services. Allowing unfair acts involving [video service] to continue where they have this effect would undermine the goal of promoting the deployment of advanced services that Congress established as a priority for the Commission. This secondary effect heightens the urgency for Commission action.[1]

Indeed, the Commission has specifically recognized the importance of local broadcasting to MVPDs: "we agree with commenters who contend that carriage of local television broadcast station signals is critical to MVPD offerings."[2]

In its 2010 National Broadband Plan, the Commission announced a national goal of achieving 100 megabits to 100 million households by 2020 as part of its National Broadband Plan.[3] Several members of the APPA are *already* capable of providing ultra-fast broadband connectivity at 100 Mbps—a full decade ahead of the Commission's proposed national goal – and their fiber systems will be capable of offering 1 Gbps long before 2020. These systems will increasingly provide many other benefits to their communities and the country, including support for economic development and competitiveness,

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1 *In the Matter of Review of the Commission's Program Access Rules and Examination of Programming Tying Arrangements*, ¶ 36, 2010 WL 236800 (F.C.C.) (rel. January 10, 2010) (footnotes omitted). While the Commission was addressing access to video programming under Section 628 it is no less true with respect to access to MVPD access to broadcast programming.

2 *News Corp Order*, ¶ 202.

3 Connecting America: The National Broadband Plan, Federal Communications Commission, released March 16, 2010.

educational opportunity, public safety, homeland security, energy efficiency, environmental protection and sustainability, affordable modern health care, quality government services, and the many other advantages that contribute to a high quality of life. For all this to occur, however, the public providers must be able to pay for their systems. To do that, they must be able to provide, or support the provision, of all major communications services, including video services. They must therefore have fair and reasonable access to broadcast and video programming. It is in this broader context that APPA responds to the Committee's questions.

Should you have further questions regarding our views, please contact me at dwaterhouse@publicpower.org or 202-467-2930.

Sincerely,

Desmarie Waterhouse

Senior Government Relations Director & Counsel

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APPA Responses to Questions in Sixth White Paper

4. The relationship between content and distributors consumes much of the debate on video services.

a. What changes to the existing rules that govern these relationships should be considered to reflect the modern market for content?

The current retransmission consent process is broken and needs to be amended.

The Communication Act's provisions governing retransmission consent are severely outdated, causing harm to consumers, and counterproductive to competition in the delivery of video programming. The market conditions and circumstances that gave rise to the retransmission consent rules and policies in 1992 no longer exist. The rules and regulations should therefore be updated to reflect the current realities of the video market.

In 1992, after three years of hearings on a broad range of issues surrounding competition in the video programming market, Congress enacted the Cable Television Consumer Protection and Competition Act of 1992, 47 U.S.C. § 521 *et seq*. ("1992 Act"). These hearings had convinced Congress that the cable industry was highly concentrated, that the competition that Congress had envisioned when it deregulated the cable industry in 1984 had not emerged. One problem that particularly disturbed Congress in 1992 was the increasing likelihood that monopoly cable companies would destroy competition from local over-the-air broadcasters.

The market-based mechanisms that Congress designed to govern retransmission consent negotiations are no longer working effectively. The record in multiple FCC proceedings clearly indicate that the balance of power has now shifted so dramatically to national broadcasters that small, competitive, facilities-based MVPDs have virtually no bargaining power.

Over the past twenty years, significant changes in the video distribution marketplace have flipped the underlying presumptions of the 1992 Act. Today, in addition to the incumbent cable operator, virtually every designated market area (DMA) is served by two direct broadcast satellite providers. In addition, by 2006, the FCC had recognized that incumbent local exchange carriers, such as Verizon and AT&T, and new competitive broadband service providers, were an increasingly available MVPD option for consumers -- a point that the Commission has confirmed again and again in each of its Annual Video Competition Reports.

As a result of the expanding choices now available to consumers, the primary reason for having retransmission consent rules—that a single MVPD wielding monopoly power over broadcast distribution in each market threatened the existence of local broadcasters—is no longer present. At the same time, the bargaining power of broadcasters has substantially increased. Today, it is the broadcasters that are in a position of dominance, as evidenced by the fact that many routinely demand excessive retransmission consent fees and other concessions, while threatening to go dark if their demands are not met.

APPA urges the Committee to take steps to remedy the retransmission consent process, which has grown increasingly acrimonious, dysfunctional, and detrimental to the interests of the public. The free-for-all

retransmission consent process brings out the worst in broadcasters: in cases in which carriage of a particular broadcast station is crucial to the competitive success of a cable operator, the broadcaster has every motivation to present the MVPD an untenable choice of service black-outs or ever-increasing prices and unwanted services for consumers.

While the FCC has in the past maintained that the retransmission consent process should rely on market forces, the current retransmission rules (in conjunction with non-duplication authority) have, in fact, *insulated* broadcasters from market forces. Were the broadcaster and cable operator approaching the negotiation from roughly equal positions of market power and capitalization, a laissez-faire approach may be acceptable. Unfortunately, while most attention in the trade press is paid to retransmission consent disputes between large national incumbent cable operators and broadcast networks, these unfair practices are disproportionately harmful to smaller, new competitive facilities-based MVPD providers, such as the public entities in APPA, and threaten the development and availability of advanced broadband in many areas of the country.

During the past year, the situation has continued to worsen, with recurring threats of blackouts and high-stakes public "showdown" negotiations. As the FCC has itself observed, even if there is no blackout, the mere ability to credibly threaten such action harms consumers.

> In addition to the studies submitted by the parties, Commission staff conducted its own analysis, which is described in greater detail in Appendix D**.** As commenters have correctly observed, the *ability* of a television broadcast station to threaten to withhold its signal, even if it does not actually do so, changes its bargaining position with respect to MVPDs, and could allow it to extract higher prices, which ultimately are passed on to consumers.[4]

All of the above demonstrates that the current retransmission consent rules are broken. Moreover, there is every reason to believe that such extortionist conduct will continue, because the broadcasters view retransmission consent as a cash cow that will provide them with "windfall profits."[5]

Recommended changes to retransmission consent process

1. Modify the network non-duplication and syndication exclusivity rules.

Broadcasters argue that the compensation being demanded as part of retransmission consent carriage agreements is simply a reflection of a market-based negotiation process, and is consistent with Congressional intent. This is not true. The current retransmission consent process and rules do not reflect market forces so much as regulatory preferences that actually prevent normal market dynamics from functioning. Indeed, the combination of retransmission consent and network non-duplication/syndicated exclusivity rights effectively limit an MVPD to a single source for programming that consumers expect to receive.

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4 News Corp., ¶ 204.

5 See, Multichannel News Article, *Carey: Retrans Windfall Coming News COO Calls Time Warner Cable Deal a 'Transformational Event'*, in which the News Corp. chief operating officer Chase Carey said the media giant is on the cusp of a windfall in retransmission-consent revenue that could ultimately fix the broken broadcasting model. http://www.multichannel.com/article/448037-Carey_Retrans_Windfall_Coming.php

The power of a broadcaster to deny carriage of its local broadcast signal must be viewed in conjunction with its ability to block the importation of a distant signal carrying the same programming under the FCC network non-duplication and syndication exclusivity rules.[6] For example, if a local NBC affiliate denies an MVPD the right to carry its programming, the local NBC affiliate would still have the right to assert its non-duplication rights against the MVPD and prevent the MVPD from carrying any distant station's NBC programming that would duplicate that of the local affiliate. As a result, the importation of distant signals is not available as a "safety valve" against unreasonable retransmission consent demands of local broadcasters.

The exclusivity rules do not foster localism, competition, or the consumer interest, and are an anathema to free-market forces that the broadcasters claim to embrace. At a minimum, Congress should revise the network non-duplication rules so that they do not apply to a television station that has not granted retransmission consent. Thus, a television station would only be permitted to assert network non-duplication protection if it is actually carried on the cable system. If a local broadcaster and an MVPD are unable to reach an agreement, the MVPD should be free to enter into an agreement with a distant station.

In order to be effective, however, the elimination of the non-duplication rules would have to be coupled with an action to prohibit the enforceability of contracts between national networks and local affiliates that act to preclude the importation of distant duplicate signals. APPA believes that Congress should ensure that the FCC has sufficient authority to take all appropriate steps to remedy this situation, including preempting the contract provisions at issue.

2. Network non-duplication should not be available unless the station offers rates on terms and conditions that are the same to all providers in the community.

In addition to conditioning the ability to enforce non-duplication rules and contractual provisions on a requirement that the local station actually be carried on the MVPD, the Committee should also make the ability to enforce non-duplication contingent on the local station charging substantially the same terms and conditions on all MVPDs serving a cable community. Small and mid-size local operators can only remain competitive with the national, vertically and horizontally integrated MSOs if they can be assured of paying per-person retransmission fees similar to those negotiated by the huge MSOs with which they must compete. The terms of these contracts must be transparent in order to provide the required assurance that rates are the same.

If the non-duplication rules are truly intended to protect "local" broadcast interests, then there can be no legitimate basis for allowing stations to provide volume-based discounts to MSOs. The only market that should be at issue is the local community. If a station (or a network) seeks to negotiate different rates between MVPDs in the same cable community market based on regional or national volume of the MVPDs, the broadcaster should not be able to assert non-duplication rights within those markets.

3. <u>Change the good faith negotiation standard.</u>

Under the Act broadcasters and MVPDs are obligated to negotiate retransmission consent agreements "in good faith." Unfortunately, to date, the Commission has made little of the statutory obligation of the parties to negotiate "in good faith" to help remedy the current disparity in the bargaining power between

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6 47 C.F.R. § 76.92.

broadcasters and MVPDs. Instead, finding that Congress did not intend that the FCC intrude in the negotiation of retransmission consent,[7] the FCC has effectively held that the good faith standard is met if the party agrees to negotiate and does not insist on a single-unilateral proposal. In particular, the FCC has specifically declined to interpret the obligation to negotiate in good faith as allowing it under normal circumstance to look at the substance of the agreement. Congress should take this opportunity to amend and clarify that the obligation to negotiate in good faith includes a requirement that broadcasters not be able to simply dictate terms based on their market size and that rates that vary widely between two different MVPDs in the same market is a presumptive evidence of bad faith negotiations.

Congress should also consider other changes to the "good faith" negotiation requirement to make it more useful to small, independent MVPDs. In particular, Congress should direct the FCC to eliminate its conclusion that the following actions by broadcasters are "presumptively legitimate:"

1. Proposals for compensation above that agreed to with other MVPDs in the same market;

2. Proposals for compensation that are different from the compensation offered by other broadcasters in the same market;

3. Proposals for carriage conditioned on carriage of any other programming, such as a broadcaster's digital signals, an affiliated cable programming service, or another broadcast station either in the same or a different market;

4. Proposals for carriage conditioned on a broadcaster obtaining channel positioning or tier placement rights;

5. Proposals for compensation in the form of commitments to purchase advertising on the broadcast station or broadcast-affiliated media; and

6. Proposals that allow termination of a retransmission consent agreement based on the occurrence of a specific event, such as implementation of SHVIA's satellite must carry requirements.[8]

While such proposals may not be unfair in negotiations between parties of roughly equal strength, they may certainly be unfair to small independent MVPDs when pitted against local broadcasters that are backed by powerful national networks. At the very least, Congress should direct the FCC to be neutral with respect to these considerations, letting the decision-makers view the totality of the circumstances without the outcome essentially dictated for them.

4. <u>Prohibit retransmission consent agreements that are conditioned on the carriage by an MVPD of non-broadcast programming or non-broadcast channels of programming affiliated with the broadcast license holder.</u>

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7 *Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues, Report and Order* 8 FCC Rcd 2965, 3006, *1993 FCC LEXIS 1835*.

8 *Id.* at ¶ 56 (emphasis added).

APPA supports a restriction on the ability of broadcasters to tie access to a particular broadcast channel to the carriage of other non-broadcast programming or affiliates. Recognizing that small, independent MVPDs have no practical choice but to carry broadcast networks to survive, the major broadcast networks and their affiliates are increasingly taking advantage of the Commission's hands-off interpretations of its "good faith" negotiation rules to demand the carriage of other channels as part of a retransmission consent agreement.

Local broadcast stations are now routinely demanding that cable operators carry affiliated programming or broadcast signals that neither the cable operator nor its subscribers want, as part of the consideration of obtaining a retransmission consent agreement. These demands have included carriage of low power or out of market stations. Public systems, which typically lack sufficient size to have comparative bargaining power, are particularly vulnerable to such "tying" arrangements.

Mandatory tying provisions have little, if anything, to do with the public policy goals underlying the enactment of the must carry/retransmission consent rules. Congress should prohibit broadcasters from requiring carriage of additional content as part of the compensation for the underlying carriage of a broadcast station. Specifically, Congress should make it a *per se* violation of the good faith negotiating obligation to insist on tying retransmission consent to carriage of other programming services.

b. How should the Communications Act balance consumer welfare with the rights of content creators?

1. The FCC should be given authority to order interim carriage.

Congress should provide the FCC with authority to order interim carriage of a broadcast signal or particular programming carried on such signal when a broadcaster and an MVPD are negotiating in good faith. The current retransmission consent process allows the broadcaster to wield the threat of going dark by withholding its broadcast signals as a means of coercing an MVPD to enter into a compensation arrangement to which it would not otherwise agree. This is not only an unfair bargaining tactic, but ultimately harms the consumers for whom the rules were initially enacted as a protection. The FCC should be given the authority to allow broadcast channels to remain on the air during a broadcaster-cable dispute, as long as the MVPD continues to negotiate in good faith, or while a dispute-resolution proceeding is pending. Interim carriage in either of the above circumstances would preserve the status quo and thereby protect consumers and the principal goal of the retransmission consent process – "to ensure that local signals are available."

2. Broadcasters should not be able to block access to online content that is otherwise freely available to other Internet users.

Broadcasters are increasingly using hardball retransmission consent negotiation tactics that harm consumers, such as blocking access to online content. APPA supports a prohibition on broadcast stations blocking access to its online content to an MVPD's subscribers as part of the retransmission consent negotiation process if such online content is otherwise freely available to other Internet users. Again, such action does not in any way advance the interest of ensuring that local signals are available to consumers.

3. The Act should be amended to better enable consumers to obtain in-state broadcast TV programming.

It has been the experience of APPA's members that it is a difficult and time-consuming process to get the FCC to exercise its current authority to modify a DMA in order to allow a community to obtain in-state television programming in situations where their current DMA provides for carriage of closer out-of-state television programming. The network non-duplication rules compound this issue if the "local" broadcast station is located out of state. The Committee should take this opportunity to amend the Communications Act to permit MVPDs to carry distant in-state broadcast networks even if they duplicate some of the programming of out-of-state network affiliate. Such a change is necessary to ensure that communities can more easily obtain in-state news, sports, political coverage, and other programming that is of importance to their residents. After all, a key underlying purpose of the non-duplication rules is to ensure that local communities get access to programming that is of local interest and importance.

RESPONSE OF THE AMERICAN TELEVISION ALLIANCE TO THE HOUSE ENERGY AND COMMERCE COMMITTEE'S WHITE PAPER ON REGULATION OF THE MARKET FOR VIDEO CONTENT AND DISTRIBUTION

The American Television Alliance would like to thank the Committee for opening a discussion about appropriate rules for the 21st century video marketplace. Our members offer a wide range of perspectives on many issues that come before the Committee. We all agree, however, that it makes no sense to govern today's video marketplace with rules that date from 1992 – the same year MTV debuted *The Real World* and Bill Clinton was elected President.

The time is now for Congress to stop local television blackouts and drastic retransmission consent rate hikes. It can do this in one of two ways. It can rip out existing regulations root and branch, leaving television broadcasters subject to the same free market in which distributors of all other kinds of programming must compete. Or, on the other hand, if Congress decides that broadcasters continue to merit special treatment, it can pass targeted reform to protect consumers nationwide and prevent blackouts. These updates could include the following:

- Enact "local choice" legislation along the lines of that considered by the Senate last summer to expand consumer choice. Under such a regime, broadcasters would retain their local market protections and simply set the price for their programming, and subscribers would choose whether or not to buy it. No price regulation, no blackouts, no threats, and most importantly, no drama for consumers.

- Allow importation of distant signals by pay-TV providers during retransmission consent disputes with local broadcasters.

- Prohibit the blocking of access to online video programming.

- Ensure consumer choice in cable programming by eliminating the "must buy" requirement for the big four networks.

- Amend the definition of "antenna" for purposes of determining over-the-air broadcast signal availability in order to reflect the transition to digital television.

- Clarify the FCC's authority to protect consumers and grant MVPD interim carriage rights during broadcaster blackouts.

- Prohibit mandatory bundling by broadcasters as a condition for retransmission consent, a statutory requirement.

Regardless of what Congress ultimately chooses, the time for action has come. Indeed, the situation is so dire that, in ATVA's view, Congress need not wait for a comprehensive Communications Act rewrite to address retransmission consent reform. The number of blackouts increased over by *one thousand percent* in the last five years – in 2014, there were 107 broadcaster blackouts, 127 blackouts in 2013, 96 blackouts in 2012, 51 blackouts in 2011, and 12 blackouts in 2010. These numbers do not even include all of the near-misses, which are equally disruptive to the consumer experience as they are typically bombarded with ad scrolls and other communications warning of a pending blackout. Compounding the injury, the timing of many blackouts coincides with marquee events consumers cherish, such as the World Series, College Football Bowl games and the Oscars.

The American public should not be continually subjected to such programming disruptions. Consumers everywhere should be able to watch any network or program they pay for. It is imperative that Congress modernize the statute to protect consumers, ensure fairness, and recognize today's vibrant and competitive video landscape. This discussion represents an important step towards resolving these issues at long last. ATVA commends the Committee for leading this important discussion.

Responses to Specific Questions

1. Broadcasters face a host of regulations based on their status as a "public trustee."

a. Does the public trustee model still make sense in the current communications marketplace?

b. Which specific obligations in law and regulation should be changed to address changes in the marketplace?

c. How can the Communications Act foster broadcasting in the 21st century? What changes in law will promote a market in which broadcasting can compete with subscription video services?

d. Are the local market rules still necessary to protect localism? What other mechanisms could promote both localism and competition? Alternatively, what changes could be made to the current local market rules to improve consumer outcomes?

As the Committee recognizes, these questions will help determine how law and regulation should treat broadcasters in the 21st century. Certainly, a good argument exists that broadcasters no longer act as public trustees. Broadcasters devote less and less airtime to covering local news, weather, and community events, instead carrying syndicated national feeds, as shown in this paper. Even "local" news is syndicated and not actually "local," as amusingly demonstrated by clips such as this one.

The frank truth is that Congress intended retransmission consent to compensate local broadcasters for the local content they created. Yet today, few broadcasters create that local content. In fact, local broadcasters demand ever-higher retransmission fees not because they want more funds to invest in local programming, but because they are forced to by their network parents in New York and Los Angeles, to whom they send a significant portion of the retransmission fees they collect. In addition, because of government sanctioned exclusivity, there is no competitive pressure on stations to develop and expand quality local programming. A network affiliate in one market does not need to distinguish itself from an affiliate in another market because it is shielded from competitive and free market forces. Finally, although broadcasters characterize their programming as an essential local service, they do not hesitate to withhold it from consumers when doing so advances their commercial interests. As far as most viewers are concerned, today's broadcasters are simply garden-variety program suppliers. No more, no less.

If Congress agrees with this conclusion, then it should treat broadcasters no differently than any other program supplier. It should, in other words, eliminate the thicket of regulations that benefit (and burden) broadcasters. Rep. Scalise's legislation, the Next Generation

Television Marketplace Act, would accomplish just this. Among other provisions, the NGTMA would:

- Eliminate commercial broadcasters' "must carry" rights to demand carriage on cable and satellite systems.

- Eliminate guaranteed carriage on the cable basic tier.

- Eliminate "network nonduplication" rules, "syndicated exclusivity" rules, and copyright provisions guaranteeing broadcast monopolies in government-determined geographic areas.

- Eliminate limits on ownership of television stations.

We think this approach has real promise. In a truly free marketplace for broadcast content, consumers, not the government, would ultimately set the terms for broadcast carriage.

That said, ATVA certainly understands the importance of localism, and the at least theoretical appeal of the "public trustee" model. We believe that some local broadcasters can be important sources of emergency information. Yet they are not the sole source for this information. The public increasingly relies on new and innovative technologies, such as social media platforms and news apps. Broadcasters do not have a monopoly on localism.

If Congress decides that the public trustee model of regulation remains valid today, two consequences naturally flow from such a determination. First, Congress should ensure that broadcasters really do provide local news and information. Second, and more importantly, Congress should *ensure that broadcasters never black out their local signal.*

With respect to the second point, Congress could immediately address blackouts in any number of targeted ways – and need not rewrite the entire Communications Act in order to do so. We describe several of the most promising options below.

1. Local Choice. In the last Congress, Senators Thune and Rockefeller proposed reforms to the broadcast carriage regime that would set up three simple rules.

- Broadcasters can set the price for their programming.

- Consumers can choose whether or not to purchase individual broadcast stations.

- Consumers never get "blacked out" again.

Under this approach, broadcasters would set per-subscriber rates and publish them. Pay-TV providers would offer consumers each broadcast station at its own published price and pass the cost directly to them. Consumers, in turn, would choose the stations they want. For

example, a consumer could choose ABC and NBC but opt out of CBS and FOX, just as she can do today with HBO and Showtime.

Such a system would benefit everybody. Consumers would finally be allowed to choose whether or not to pay for broadcast programming. No longer would consumers be saddled with price increases for broadcast programming they do not want. Consumers would never again lose access their chosen broadcast programming because of "retransmission consent blackouts."

Broadcasters, for their part, could charge as much as they believe the market will permit, without having to negotiate with pay-TV companies to reach their audiences. Broadcasters would be forced to rely on the free market, creating a better, more efficient system, with more incentives to invest in local programming, than exist under today's complex and highly regulated retransmission consent regime.

2. Blackout relief. Congress could authorize the FCC to require interim carriage during retransmission consent impasses so the programming stays up while the negotiations continue. This idea can be described as "blackout relief" for consumers.

Some might agree with the MVPD in a particular retransmission consent fight; others might agree with the broadcaster. We should all be able to agree, however, not to put consumers in the middle. They have done nothing wrong. All they want is to watch television from the MVPD that they have chosen.

Blackout relief would let them do just that. It would require the FCC to order interim carriage during all blackouts, and broadcasters would continue to receive compensation from pay-TV under terms of the current contract. It would also provide that subsequent agreements will govern carriage back to the date of the blackout, so neither party is advantaged by the interim carriage.

Blackout relief could also take the form of changes to distant signal law and regulation. Congress should permit (or direct the FCC to permit) pay-TV providers to deliver neighboring or same-region signals during blackouts. While this solution is less perfect than full interim carriage, it would soften the blow to consumers. Consumers in such circumstances would continue to have access to a network affiliate with neighboring-station news, weather and sports.

For example, if a broadcaster were to black out the local Bend, Oregon FOX station, the MVPD would be able to temporarily bring in an out-of-market station, such as the Portland FOX station. This would not be a perfect substitute for the blacked-out local station, since the Portland station would provide regional content, not Bend-specific content. But at least some measure of protection would be extended to affected consumers by providing access to network programming and regional content.

Additionally, changing the distant signal rules would level the playing field a bit in the negotiating process and make it more likely that the broadcaster would not pull its signal in the

first place. Broadcasters would be introduced to some of the same competitive pressures that satellite carriers and cable operators face every day, and consumers would benefit as a result.

3. Access to online video programming. Broadcasters that choose to make their programming available online freely to consumers should not be able to block access to a consumer because they are fighting with the consumers' ISP. Last year CBS blocked Time Warner Cable broadband customers from accessing CBS content over the Internet during a retransmission consent dispute with the cable company. It blocked not only Time Warner Cable television subscribers, but its stand-alone broadband subscribers as well. Such blatant interference with consumers' access to Internet content has no place in the retransmission consent world. Such conduct should be prohibited.

4. Elimination of "must buy." Cable operators are required to offer a basic service tier that must include all local broadcast television stations that all consumers must purchase before subscribing to additional video programming. This reinforces the monopoly power of the local broadcast affiliate by requiring cable and telco operators to place all broadcast signals on the basic tier of service. These provisions also harm consumers by limiting operators' ability to provide a range of viewing options to consumers.

5. Antenna reform. Congress should facilitate the reception of broadcast signals for satellite subscribers who cannot receive a signal over-the-air using a standard indoor rabbit ear antenna. Tests to determine whether a household can receive an over-the-air signal should use an indoor antenna. When Congress removed "outdoor" as a qualification to "antenna" in 2004, it meant it. If a household cannot receive the local station by use of an indoor antenna, it should be eligible for a distant network station received by satellite.

6. No mandatory bundling as a condition for retransmission consent. One of the challenges of retransmission consent negotiations comes from broadcasters' frequent insistence on tying their grant of retransmission consent for the broadcast station to the distributor's carriage of affiliated, non-broadcast programming. This type of forced tying arrangement should be prohibited.

2. Cable services are governed largely by the 1992 Cable Act, a law passed when cable represented a near monopoly in subscription video.

a. How have market conditions changed the assumptions that form the foundation of the Cable Act? What changes to the Cable Act should be made in recognition of the market?

b. Cable systems are required to provide access to their distribution platform in a variety of ways, including program access, leased access channels, and PEG channels. Are these provisions warranted in the era of the Internet?

The video marketplace has changed beyond recognition since 1992. Regulation of the retransmission consent regime has not.

In particular, when Congress created the retransmission consent regime in 1992, it sought to balance the market power of monopoly cable operators against the monopoly power of broadcast network affiliates with exclusive territories. In the ensuing two decades, however, the video programming distribution industry has undergone profound changes. Cable operators are no longer monopolies in the markets for video distribution. Most consumers can now choose from among three or more distributors – not to mention online video providers. Yet broadcasters' exclusive territories and the Commission's retransmission consent regime have remained largely unchanged.

Moreover, broadcasters have increasingly engaged in conduct designed to enhance their bargaining power even beyond what they possessed in 1992. This includes collusion in the negotiation of retransmission and prohibiting the use of their programming as a distant network or significantly viewed station, even though the law allows it – both of which were addressed, at least partially, in STELAR.

Broadcasters have exploited this situation by abusing their retransmission consent rights during negotiations, using the tactics of brinksmanship and blackouts to extract ever-greater fees from MVPDs. SNL Kagan estimates that MVPDs paid *nearly $5 billion* in retransmission consent fees last year, and that this figure will soar to a staggering *$9.3 billion* by 2020. Because of reverse compensation, these fees increasingly go to networks and not used to invest in local programming.

When MVPDs decline to meet broadcasters' demands, they face the loss of programming for their subscribers. The result: consumers are harmed no matter what the MVPD chooses. If the MVPD acquiesces, consumers pay higher prices for programming. If the MVPD resists, our customers loses key programming. Blackouts may even force them to switch from their first choice provider. This, in turn, can cause the loss of their chosen package, pricing, and DVR recording history, not to mention the hassle of transferring billing, equipment and set up to their second (or third) choice provider. Broadcaster blackouts, moreover, affect all MVPDs. Thus, a consumer who switches MVPDs in order to obtain broadcast programming may find herself needing to do so again within a short time.

We believe Congress should act, and it should do so now. Please refer to our answer to question one for more specifics.

3. Satellite television providers are currently regulated under law and regulation specific to their technology, despite the fact that they compete directly with cable. What changes can be made in the Communications Act (and other statutes) to reduce disparate treatment of competing technologies?

ATVA members agree as a general proposition that competing providers should be regulated comparably to the extent possible. This, however, can prove to be an easier goal to implement in theory than in practice. While cable and satellite may seem similar to subscribers when they offer traditional "linear" video service, they use different technologies, different network architectures, and different operational setups.

It is fair to say that ATVA members sometimes disagree about specific proposals to achieve "regulatory parity" – and the question of what, exactly, constitutes regulatory parity can prove quite difficult to answer in practice. In other cases, the consequences of attempts to create regulatory parity are simply unknowable. To take one example, the cable network nonduplication and syndicated exclusivity rules are generally understood to serve the same function (protecting broadcast monopolies) as do the satellite "distant signal" provisions contained in the Copyright and Communications Acts. Nobody knows, however, what would happen if Congress attempted to apply the satellite rules to cable, or *vice versa*. (For the record, ATVA believes a better solution would be to achieve parity by eliminating both sets of rules.)

Again, this is not to say that regulatory parity is not a worthy goal. We think it is. The merits of any particular "parity" proposal, however, depend on the specifics of the proposal itself.

4. The relationship between content and distributors consumes much of the debate on video services.

a. What changes to the existing rules that govern these relationships should be considered to reflect the modern market for content?

b. How should the Communications Act balance consumer welfare with the rights of content creators?

Please refer to our answers to questions one and five.

5. Over-the-top video services are not addressed in the current Communications Act. How should the Act treat these services? What are the consequences for competition and innovation if they are subjected to the legacy rules for MVPDs?

The rapid growth of over-the-top services, and the options these services provide consumers, constitutes further evidence of the dynamic and competitive nature of the video

distribution market. It is also further evidence of just how much the market has changed since laws concerning retransmission consent were written.

Conclusion

ATVA again would like to thank the Committee for this opportunity to offer our perspective on the video marketplace. It is long past time to reconsider provisions of the Act and FCC regulations that have become little more than relics. We believe that Congress can protect competition and consumers either by eliminating legacy regulations or by implementing targeted reform to eliminate blackouts. While we would welcome such reform as part of a more comprehensive Communications Act rewrite, we think Congress need not wait to complete that process before helping television viewers throughout the country.

However Congress decides to proceed, we look forward to working with this Committee during this process in the coming months.

[redacted]

From: Wess Murphy [redacted]
Sent: Thursday, January 22, 2015 12:37 PM
To: CommActUpdate
Cc: [redacted]
Subject: Re: Regulation of the Market for Video Content and Distribution - Response to White Paper #6

The Honorable Fred Upton
2183 Rayburn House Office Building
Washington, DC 20515

The Honorable Greg Walden
2185 Rayburn House Office Building
Washington, DC 20515

I'm writing you today as I am concerned about the upcoming conversations you will be having in Washington regarding PEG access laws and funding. As Executive Director of Andover Community Access & Media in Massachusetts I have seen first hand the multiple benefits having funding from cable companies provides our local communities.

Because of the current laws that provide for cable companies to contribute back to the community, organizations like ours are able to provide TRUE local coverage of community events and live broadcasts of municipal meetings. This is something that is sadly more and more scarce as media conglomerates get bigger and bigger and focus less on local coverage. No one can get in depth and spend as much time on in town media as our local PEG access organizations.

Funding provided by cable companies also provides us with the ability to outfit and operate an HD television studio that both the community as well as high school classes take advantage of on a daily basis. On a given year we have upwards of 120 students coming through our studios through TV production classes. Graduates have gone on to work for CNN, NBC, Jerry Bruckheimer and multiple other networks and studios. I myself am a product of this facility.

I hope you and your fellow committee members consider seriously what is at stake as you go forward with your talks and deliberations on this topic. Please know that PEG funding and regulation is VITAL to the only true community media many cities and towns in our nation have left.

Thank you so much for your time.

Wess Murphy
Executive Director
Andover Community Access & Media
[redacted]

[redacted]

From: Paul LeValley <[redacted]
Sent: Friday, January 23, 2015 4:28 PM
To: CommActUpdate
Cc: mwas >> Mike Wassenaar
Subject: Re: Regulation of the Market for Video Content and Distribution - Response to White Paper #6

January 23, 2015

The Honorable Fred Upton
2183 Rayburn House Office Building
Washington, DC 20515

The Honorable Greg Walden
2185 Rayburn House Office Building
Washington, DC 20515

Re: Regulation of the Market for Video Content and Distribution - Response to White Paper #6

Dear Congressmen:

I write today to share with you the success of our independent media training, production, and programming organization in the hopes that you will see how important these kinds of facilities and programs are to the life of a community.

At Arlington Independent Media (AIM) we bring independent voices together to build the Arlington community. We provide a place for hundreds of dedicated, talented, and hard working volunteers to gather. They come to AIM to learn the basic and advanced techniques of communicating with both established and emerging media. They work together to bring the sights and sounds of Arlington to our audience. Together they form a family, diverse in background, but united in common purpose.

In a world that becomes more "virtual" everyday, AIM provides a physical location where face-to-face interaction between producers and volunteers results in knowledge, art, and community action. In a world where technology continues to provide greater opportunities for communication, AIM provides comprehensive media training to people of all ages, backgrounds, and beliefs. We teach the public to be effective consumers and producers of media. In a world where a few companies continue to control the production, distribution, and exhibition of media, AIM provides easy and affordable access to the training and tools that make people active participants in the marketplace of ideas.

Local, independent media is a crucial component of communities across our nation and is a central cornerstone of a functioning and vibrant democracy. The very principles upon which our democracy is based very much depend upon the free flow of a wide variety of diverse voices actively engaged in exploring issues critical to everyday people. An informed citizenry which not only receives, but produces media is the lifeblood of a community, and local, independent media production and training centers like AIM are the heart that pumps that blood. Arlington Independent Media seeks to strategically strengthen the core principles underpinning our great nation from the inside out by promoting these critical, foundational values.

We are dedicated to the simple proposition that in the marketplace of ideas, people ought to be engaged producers as well as consumers. We believe that in a world where more channels of information are being increasingly controlled by fewer and fewer companies, there absolutely must be an untouchable resource in each community that is reserved for the public in order to ensure that the voices of everyday people are heard. We have effectively served as that resource all of these years by strategically bringing our local community members together in such a way so as to promote the unfettered power of their ideas, opinions and artistic expressions. By providing comprehensive basic training, masters-level advanced instruction, a fully equipped HD digital production facility, a video-enhanced Web site, and channels delivered to every Arlington cable subscriber, we empower everyday people to become active and engaged producers of the media -- not just passive receivers of someone else's point of view.

In this spirit, throughout our long history AIM has been training people of all ages, races, religions and backgrounds in basic and advanced television production, and then providing them state-of-the-art equipment so that they can effectively exercise their First Amendment right to express their critical point of view.

In the 32 years since AIM was established, we have succeeded in this important mission in measurable and commendable ways. For example, during this time more than fourteen thousand programs have been produced and more than eight thousand people have been trained in the art and science of television. AIM has even won twenty-seven national awards, including being named America's best community media organization *nine times.* AIM is also highly engaged on the ground in Arlington. We have more than five hundred members who are active in the community and are closely connected by the physical presence of our facility on North Danville Street. In addition to covering local events, we participate in community organizations, serve on the boards of local non-profits, testify at town meetings, and regularly put employees through the *Leadership Arlington* program.

AIM serves the Arlington community in many crucial ways. For more than twenty-eight years we have provided comprehensive training in media literacy and production to everyone from elementary school students to senior citizens. Our expert instruction team draws from the faculty at nearby George Mason, Marymount, American, and Howard Universities as well as from the large community of professional writers, directors and producers in and around the Washington, D.C. area. Our training is designed to be highly interactive and puts state-of-the-art equipment into the hands of our students from the moment the class begins. From the first moment, we emphasize that people should be producers, not just consumers of media.

We teach customized classes in the summer to children eight to twelve years old in our "Video Summer School" program and we offer a summer-long paid internship to high school students during which we teach them all aspects of documentary production. This "Document Arlington" program, offered in partnership with the Arlington Public Schools, yields two finished documentary projects about the people, places and events in and around Arlington every summer.

Our graduates go on to put their unique ideas and artistic visions into compelling programs that rise far above the usual home movie quality of most YouTube videos. By working closely with our staff and the dozens of award-winning volunteers who are ready to help, their programs achieve both a technical excellence and a professional look that draws an audience. These "community producers" create programs in a multitude of languages on a wide variety of topics, ranging from documentaries, to high school sports, to community forums.

AIM staff works closely with our volunteers to make certain that debates, elections, community events, and important issues get covered. We sponsor "non-profit days" where local service organizations are invited into our studios to make public service announcements free of charge. We run an annual film festival that honors the best innovative, experimental, and deeply personal films from a tri-state region. We produce hundreds of programs every year, air them on our cable channel, and place them on our Web site, so that Arlington residents will be better informed about their world, and thus better able to be productive and engaged members of the community.

All that we have been able to accomplish over the more than thirty years that we have been serving the Arlington community has been made possible by the ability of our local government to negotiate with our local cable companies. The franchise agreements they have reached together have provided the Arlington community with many benefits – and we hope that will continue to be the case for many years to come.

Since we are located only a few Metro stops from Capitol Hill, I would like to cordially invite you to visit anytime so that you can observe us in action and see how important this local, independent media center is to our community. You can also visit our website at www.arlingtonmedia.org to find out more about our programs and projects.

Thank you for allowing me this opportunity to tell you a little bit about how AIM serves Arlington.

Sincerely,

Paul LeValley

Executive Director

Arlington Independent Media

[redacted]

- -

Paul LeValley
Executive Director
Arlington Independent Media

Response of the Association of Public Television Stations (APTS),
Corporation for Public Broadcasting (CPB) and PBS to the
House Energy and Commerce Committee
White Paper on Video Policy of December 10, 2014

Thank you for the opportunity to respond to this important set of questions about the future of video programming.

These issues are of great importance to the public broadcasting system and the 364 public television stations across the country. The Communications Act and companion legislation enacted over the years have a tremendous influence on the services that are available to your constituents and our viewers nationwide.

Public broadcasting is charged by the Public Broadcasting Act with providing universal service to every corner of this country. We take that mission seriously and we are proud to maximize our available spectrum to deliver unparalleled educational content and interactive tools, lifesaving public safety services, unrivaled public affairs programming including multicast channels with coverage of legislative and other governmental bodies in many states, the best in nature and science, in-depth historical and cultural programming, and some of the finest dramas on television. We provide these services to everyone, everywhere, every day, for free.

This universal service mission extends beyond geography, ensuring that local public media stations throughout this country are meeting the needs of their diverse local communities and giving a voice to all our nation's citizens.

Our education mission spans the continuum of lifelong learning, beginning with the highly successful Ready to Learn program that helps preschoolers prepare to succeed in school and in life. More than 90 million young children have benefited from this pre-school enrichment which is available every day for free over the air and enhanced through multimedia platforms and interactive educational tools used by teachers, parents, and caregivers nationwide.

This commitment to education continues through elementary and secondary school with the PBS LearningMedia initiative, which now provides 1.5 million teachers and 30 million K-12 students, including more than 30,000 homeschoolers, with standards-based, curriculum-aligned, interactive digital learning tools drawn from the best of public television programming as well as excellent source material from the Library of Congress, the National Archives, NASA, the National Science Foundation and other leading educational and cultural institutions.

CPB's American Graduate initiative is aimed at reducing the high-school dropout rate by covering all facets of the issue for broadcast, web and mobile platforms and by engaging and empowering teachers, parents and students through community collaborations and classroom resources. It has had a significant impact on public awareness of the drop-out crisis and in fostering national and community partnerships to deal effectively with the problem.

Finally, public television operates one of the largest Graduate Equivalency Diploma (GED) programs in the country, serving hundreds of thousands of second-chance learners and adult students. Stations are also rolling out new initiatives in workforce development and veterans training among adults, and public television's free broadcast and digital services provide lifetime enrichment for hundreds of millions of Americans through historical, cultural and public affairs television programming.

Public safety is another mission that public broadcasters have long pursued as a way to maximize use of our licensed spectrum for the public good. Public television stations serve as a backbone for the Warning Alert and Response Network (WARN) system of presidential alerts in times of national emergency and, additionally, are increasingly effective partners with state and local public safety, law enforcement and first responder organizations—connecting these agencies with one another, with the public, and with vital data-casting capabilities in times of crisis.

As public distrust of national institutions is at an all-time high, public broadcasters have retained the trust of the American people in the comprehensive, transparent, objective and civil coverage of news and public affairs, serving as essential resources for a well-informed citizenry to make the decisions on which a well-functioning democracy depends.[1] Further, public television stations throughout the country are helping communities understand the issues they face locally and regionally, allowing them to develop inclusive, local solutions.

Congress has a history of enacting communications laws that recognize the unique public service mission of our stations and the need to ensure that viewers throughout America, regardless of where they were located or how they received their programming, had access to the highest quality services offered by their local public television stations. We hope any future legislation will be crafted in the same manner.

We have chosen to limit our comments today to the areas on which we can best offer our unique perspective.

Again, we greatly appreciate the opportunity to address these critical issues and we look forward to working with the Committee as you undertake the important task of examining and reauthorizing portions of the Communications Act.

[1] See PBS annual Trust Survey, http://www-tc.pbs.org/about/media/about/cms_page_media/774/2014_PBS_Trust_Survey.pdf

Question 1. While all over-the-air broadcasters act as trustees of the public's broadcast spectrum, noncommercial educational public broadcasters embody this role throughout each and every broadcast day. Evidence of this can be seen in the high level of trust the American public has in public television.[2] Thus, when considering the laws and obligations that pertain to us, it is critical that this Committee bear in mind the public service mission of local public broadcasters and their unique role in the broadcasting world.

Each public broadcasting station is locally owned and operated and exists to fulfill a public service mission that addresses the critical needs of its local community of license. Public media takes this mission very seriously and is deeply committed to improving the lives of our communities, especially as it relates to education, public safety and fostering a robust civic dialogue.

Public media does not do this for ratings or membership pledges. Stations do this because of their commitment to public service and the communities they serve.

Congress has historically recognized our unique public service mission and enacted legislation to ensure that viewers throughout the country have access to a diverse, high-quality range of programming and services that our local stations offer, regardless of how citizens receive such services.

We feel it is critically important that this Committee also views our services through that lens as it looks to change the laws that govern the potential viewability and access to our programming and services.

With regard to our carriage rights, in recognizing the critical value that local public television stations provide their local communities, Congress made all public television stations must-carry on cable without the ability to negotiate retransmission consent. This policy supports the core mission and commitment of public television to providing universal service of the highest quality to every household in America while also recognizing the portion of taxpayer support that serves as seed money to enable local stations to provide these exceptional services. We hope that any changes to the existing laws that govern cable carriage will continue to maintain this important provision that guarantees access to local public television for all Americans.

[2] See PBS annual Trust Survey, http://www-tc.pbs.org/about/media/about/cms_page_media/774/2014_PBS_Trust_Survey.pdf

With regard to local market rules, local service lies at the heart of public broadcasting's services, and thus it is critical that rules encouraging localism be maintained in any changes to the Communications Act.

When it comes to local markets, public television has a unique concern with the carriage of local stations outside of their DMAs, and we commend Congress for addressing this in the Satellite Television Extension and Localism Act (STELA) and in the recent passage of the Satellite Television Extension and Localism Act Reauthorization (STELAR).

About one-third of public television licensees are statewide licensees that are licensed, often by state government entities, to serve the entire population of those states. Many of these stations receive funding from their states and are therefore mandated to serve all the citizens of their states.

STELA granted permission to satellite providers to voluntarily carry public television state networks' services to all the viewers within the state. This addressed a serious concern that in more than a dozen states, direct broadcast satellite (e.g., DISH, DirecTV) subscribers did not receive their state's public television service in Designated Market Areas (DMAs) in which the public television network was mandated to serve but did not have a transmitter located. The amount of unserved subscribers ranged among these states from two percent to over 50 percent of the state residents.

The provision added in the previous reauthorization removed the statutory barriers to permit satellite carriers to carry public television state networks throughout their states. As compression technology improves and satellite capacity expands, we hope that the satellite providers will work more closely with us in areas where their capacity allows them to make use of this statutory change and will carry statewide licensees to all residents of their states.

We urge that any changes to the communications law should maintain this important permissive language allowing for statewide carriage of public televisions' state licensees by satellite providers.

Question 2. Concerning carriage specifically as it pertains to cable, it is critical that all local public television stations maintain their current carriage rights on cable platforms. Further, public television believes it is absolutely critical that Congress maintains the rule that cable subscribers must have access to the broadcast channels in their local markets and that these channels, including the must-carry channels of local public television stations, must be placed on the basic tier of service.

Consumers should not be financially pressured into making a choice between an MVPD package that contains local broadcasters or just advanced tier/national services. Local broadcasters, including local public television stations, provide critical life-line emergency services, news, weather, educational and public affairs programming. These essential and irreplaceable services, especially those offered by local public television stations, should always be a part of any MVPD package.

Public broadcasting is charged with providing universal service to all Americans. Our programming and services are of a unique and unmatched educational nature that should be available to all viewers regardless of how they receive their programming. In addition, there is a 40-year history of federal investment in public broadcasting. A portion of local public television stations' budgets are provided by taxpayer funding, making it all the more imperative that such taxpayers have access to our programming and that it be made available without paying extra for tiers above basic cable. Thus, it is critical that our stations be available to all subscribers of any MVPD package and always accessible through any bundled service package offered by providers.

Public television was very appreciative that the Senate Commerce Committee's Local Choice proposal in the last Congress recognized the unique role and services of public television stations by excluding local must-carry channels from the proposal. As this Committee looks at that proposal and others when considering carriage changes in the Communications Act, we urge the Committee to recognize the critical value we provide local communities and continue to maintain our carriage rights on the basic tier of all MVPD platforms.

Questions 3/4/5 Television viewing has dramatically changed over the past few years and we believe it is important to ensure essential competitive protections in the new video marketplace to guarantee that viewers continue to have access to all of the exceptional and irreplaceable programming and services offered by local public television stations.

As part of our universal and public service missions, public broadcasting has made it a priority to be available wherever and whenever citizens view content. PBS and public television stations have embraced digital platforms and experienced remarkable success in reaching viewers online. For instance, PBS sites have received over 21.5 million unique visitors in a single month and those visitors collectively watch over 407 million videos on digital platforms per month. PBS mobile applications have been downloaded over 16.2 million times, including over a dozen different educational, curriculum-driven games for children. PBSKIDS.org, with its educational programming, funded in part by the Department of Education, has accounted for over 45 percent of all time spent watching kids videos online in recent months.

With content access and viewing habits rapidly changing, it is critical that new entrants into the video marketplace comply with the statutory license framework so that viewers have access to public television content and content creators remain fairly compensated as their work is distributed on new platforms.

It is essential that every viewer has access to all of the programming and services that are being offered by their local public television station, including HD programming, without any degradation of quality.

Further, any new entrants must operate within a regulatory framework that ensures fairness in the marketplace and guarantees consumer protections and recourse should issues arise.

The services we have outlined today are all made possible by the federal investment in public broadcasting which acts as irreplaceable seed money. Stations match this investment sixfold with local commitments in order to bring programs and services to our citizens that meet their unique needs.

Public broadcasting is one of the most successful public-private partnerships in the history of this country. The continued success of this partnership depends on people being able to interact with local public television stations no matter the platform.

It is also important to recognize that, as much as we have innovated to ensure our services are available on a wide array of platforms, broadcast spectrum remains the keystone to all that we do. Without the broadcast spectrum we would not be able to meet our universal service mission or expand on our public services. Most of our ground-breaking work in public safety is tied to our broadcast spectrum. Our carriage rights are tied to our broadcast spectrum. Above all, our ability to reach the most remote and underserved communities is dependent upon our broadcast spectrum.

We are honored to serve everyone, everywhere, every day, for free, using platforms that modern technology enables and we are profoundly grateful for the federal funding that makes this remarkable public-private partnership possible.

As the Committee moves forward with its examination of the Communications Act, which would affect the viewability and carriage of our local stations, we urge the Committee to recognize the critical and unique role that local public television stations serve in local communities nationwide. As it considers changes to the Act, we urge the Committee to maintain the important protections in current law and to ensure that citizens living in every corner of this country will continue to maintain access to the unparalleled services of our local stations, regardless of how they access and interact with our content and services.

Thank you for the opportunity to share these thoughts and this record of service and progress with you today. We look forward to working with this Committee as you consider changes to this important legislation.

January 23, 2015

The Honorable Fred Upton
2183 Rayburn House Office Building
Washington, DC 20515

The Honorable Greg Walden
2185 Rayburn House Office Building
Washington, DC 20515

Dear Committee Members:

I am writing to express my opposition to any change in regulations that would no longer require cable companies to provide public access channels or make public access, education, government (PEG) payments to support public, educational, or governmental programming.

Public access channels provide tremendous community benefit, which allows residents at the local level to stay informed on issues that are important to them. These community resources provide access to local city council meetings, which helps to ensure transparency in how decisions are made at the local level. In short, community television has evolved to be the **"town halls"** of our democratic heritage allowing every citizen an equal opportunity to be heard while being made aware of important information on government resources.

Additionally, with continued cuts in education, public access channels are becoming an important tool for educators by providing content enhancing curriculum. Public access channels also provide an opportunity for students to gain hand-on experience operating state-of-the-art hi-tech digital media equipment.

As a Board Member of KMVT, in the heart of Silicon Valley, education is a major component of what our station broadcasts. KMVT provides content on a wide variety of issues that help prepare students for advanced careers, but other important content as well including health, exercise, diet, and aging.

In closing, I do not support the current proposal to change regulations that would no longer require cable companies to provide public access channels.

Thank you for your consideration in this matter.

Sincerely,

Saadia Aurakzai-Foster
KMVT Board Member

[redacted]

From: Jason Jakaitis <[redacted]
Sent: Friday, January 23, 2015 7:12 PM
To: CommActUpdate
Cc: Anne Simmons; Carol Varney; Brian Roberts
Subject: Re: Regulation of the Market for Video Content and Distribution - Response to White Paper #6

To the Honorable Fred Upton and Greg Walden,
My name is Jason Jakaitis - I am the Director of Independent Media at the Bay Area Video Coalition (BAVC). BAVC oversees the operation of SF Commons - the City of San Francisco's Public Access Television station. The comment below has been drafted by BAVC staff in response to the sixth White Paper released in preparation for a possible update to the Communications Act, specifically to the prompt:

"Cable systems are required to provide access to their distribution platform in a variety of ways, including program access, leased access channels, and PEG channels. Are these provisions warranted in the era of the Internet?"

San Francisco is a city that has for many years rested at the intersection of new media and low-tech traditions. Our city's nationally prominent tech-based private sector intermingles in a small geographic area with a legacy of vocal activists, known for their advocacy of social justice issues, the arts community and an increasingly pronounced pride in localism. It is members of these communities--many of whom exist in lower income brackets and are communities of color--who are benefitting the most from PEG services. Without a strong PEG presence in San Francisco, many of these communities would lose their representation in the digital realm.

Increasingly stratified income inequality in San Francisco is representative of many urban areas in the United States. Here specifically, as the tech-based world encroaches on low-income populations, Public Access Television (SF Commons), serves as a vehicle for our constituents to continue to be spokespeople for their causes and communities through mass media platforms--our content is accessible in the Internet, as well as cable television, and continues to adapt to a variety of interactive media. The community media center in which SF Commons is housed (the Bay Area Video Coalition) provides not only a *physical space* for the convergence of ideas, creativity and activism, but also serves as a training ground to help people of all income levels and abilities continue to learn new technologies in a low-cost and welcoming environment.

--

Jason Jakaitis | Director of Independent Media

[redacted]

Inspiring social change by empowering media makers to create and share diverse stories through art, education and technology.

BCTV

BEDFORD COMMUNITY TELEVISION
CHANNELS 16 ,22 & 23

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www.bedfordtv.com

January 22, 2015

The Honorable Fred Upton
2183 Rayburn House Office Building
Washington, DC 20515

The Honorable Greg Walden
2185 Rayburn House Office Building
Washington, DC 20515

Gentlemen:

I am writing to make you aware of how important PEG Community Television is to the Town of Bedford, New Hampshire.

PEG TV has been a part of Bedford, NH since the first agreement was signed with our local cable provider in 1993. It has continued to grow to where we now have three active channels dedicated individually to public, government and education programming

We are a community of 23,000 residents. Close to 7000 of the 8500 households have cable and rely on our local community PEG station to provide them live town government programming. We broadcast over 250 live government and school board meetings. These meetings are also simultaneously broadcast live over our station website. Meetings are then rebroadcast for later TV viewing as well.

The meetings are also available through our PEG station's Video on Demand Service. Each meeting is indexed so viewers can quickly go to an agenda item. All of this is made possible through the funding we receive from our PEG Access Fees; fees by the way that are collected from the cable subscriber in what is called a "Pass Thru" system that our cable provider, Comcast, uses to bill residents. No money is spent on the part of the cable provider to support PEG Access TV, other than adding a "Franchise Fee" line in the monthly cable bill. IT SHOULD BE EMPHASIZED THAT RESIDENTS PAY FOR PEG TV, NOT THE CABLE COMPANIES.

PEG Access Television is the local media venue that helps to keep local government transparent. It keeps residents connected to their local government and community in general. Seniors especially are dependent on local PEG TV. They are not internet savvy and PEG access is a low cost option that helps to keep them informed and connected to their community. Traditional TV is still alive and well and internet video distribution is not the answer for everyone. PEG TV is more personal and an inexpensive option.

School Programming on our School District PEG Access Channel has never been more popular. Games are broadcast live and rebroadcast. School concerts, plays and classroom activities are taped and broadcast. Adult education programs are broadcast and school board member shows help to educate parents on everything from Curriculum offerings to "How to".....programming.

Public programming has given many of our citizens a venue to use their creativity to produce programs that help to give viewers an in-depth look into their community. Residents have produced local programming that helps to define who we are in the Town of Bedford, New Hampshire.

Please help keep our community spirit alive by supporting PEG Access TV. Your support is greatly appreciated.

Sincerely,

[redacted]

Bill Jennings
Station Manager [redacted]
Bedford Community Television
Town of Bedford
10 Meetinghouse Road
Bedford, NH 03110
[redacted]

[redacted]

From: Jeff Hansell [redacted]
Sent: Thursday, January 29, 2015 12:03 AM
To: CommActUpdate
Subject: Regulation of the Market for Video Content and Distribution: Response to White Paper #6

The Honorable Fred Upton

2183 Rayburn House Office Building

Washington, DC 20515

The Honorable Greg Walden

2185 Rayburn House Office Building

Washington, DC 20515

Sent via email to: commactupdate@mail.house.gov

Re: Regulation of the Market for Video Content and Distribution: Response to White Paper #6

Dear Representatives Upton and Walden:

Ten years ago, when Belmont Community Media Center (BMC), a 501c3 non-profit organization, came into existence due to provisions in the Federal & State regulations, the local newspaper was in decline and news coverage about Belmont on TV or radio was rare if at all.

In the ten years passing, BMC has become a primary source for information about news, events and actions by local government and schools for the now greatly shrunken local newspaper (1 reporter) and for an independent news website (1 person), because BMC documents three to four meeting or events per week.

While BMC is not a part of the local government, both the Board of Selectmen and various committees & boards, as well as the Belmont School Department depend upon BMC's technical & organizational capacity to document and produce TV coverage and informational programs for consumption by residents on an ongoing basis.

Today, people expect BMC to document all critical government meetings, actions and events and make the videos accessible to all. This expectation is shared by residents and governmental bodies.

Without a fundamental federal framework (and supporting state laws) that allow municipalities & states to collect franchise fees from video/internet service providers/cable TV companies which fund local public, educational, & government access TV channels – such as Belmont Media Center - a vital tool for local governments, a source of hyper-local news and a hub for neutral and non-commercial dialogue, and a most unique and American forum of free speech would be lost – not to be replaced by any commercial entity.

In the “Blueprint for Localism in Communications” the National Association of Telecommunication Officers and Advisors (NATOA) correctly said:

“The convergence of communications technologies led by Internet Protocol and exponential growth of computing power is fundamentally transforming the communications industry. This transformation is taking place at a time of increasing industry consolidation and the concentration of political and economic power in the hands of a few incumbent providers. That in turn has led to deregulatory measures, laws and regulations that have the potential to be harmful to the interests of the public and local communities. At stake is local government’s ability to ensure provision of important public benefits such as local consumer protection, support for multiple voices in media through Public, Education and Government (“PEG”) programming, and regulation and compensation for the private use of public property, to name just a few. “

As others have stated better, there is a real need to increase, rather than decrease support for Media Localism going forward. PEG media access centers and broadband media access services through other community anchors all provide constructive outlets for community youth to learn media skills and for seniors to actively create programming on a range of issues in their local community. PEG channels and other community-based broadband media outlets promote civic participation, educational opportunities and technology access for diverse communities across the nation.

We appreciate your careful consideration of these grassroots, community-based communication resources such as PEG media access, which are essential for us to meet the goal of universal access to open broadband networks. And we hope that you will work to defend them in the face of ongoing corporate consolidation of the cable and broadband industries.

Sincerely,
Jeffrey Hansell
Executive Director

Belmont Media Center
[redacted]

CC:
U.S. Congresswoman Katherine Clark

[redacted]

From: Annie Bessette [redacted]
Sent: Thursday, January 22, 2015 3:56 PM
To: CommActUpdate
Cc: [redacted]
Subject: Regulation of the Market for Video Content and Distribution - Response to White Paper #6

The Honorable Fred Upton
2183 Rayburn House Office Building Washington, DC 20515

The Honorable Greg Walden
2185 Rayburn House Office Building Washington, DC 20515

Dear Members of the House Energy and Commerce Committee,

Our PEG Access center, GNAT, openly and equitably serves all the residents, schools, municipalities and nonprofits in our region. Your Committee has questioned whether PEG channels is a community service that still serves any need now that the Internet is so widespread, and our answer to that is a very strong "yes."

We are one of 25 PEG Access Centers in Vermont, the most rural of all the states. Because the few broadcast TV channels we have can't cover the state as well as we can, folks here rely on us to provide hyper-local coverage of town and school meetings, community and student events, lectures, performances and a whole host of other types of programming. We offer: State of the Art Media Technologies and Studio Facilities; Training Programs; Youth Programs; Community Bulletins & Video Announcements; Online Video-on-Demand; Media Transfer Services. Based on our involvement in our community—and thanks to volunteers from our community—we recently won the Alliance for Community Media 2014 National Overall Excellence Award.

We strongly encourage your Committee to help PEG Access, our channels and our funding survive and thrive by incorporating PEG into Internet broadband legislation, as it has been allowed to do under the Cable Communications Act of 1984.

Since 1995, we have been not only meeting our primary obligation to cable television subscribers with 24/7 programming on our 5 cable TV channels, but also serving everyone in our region by making available the free non-commercial use of our studio facilities, free and low-cost training, equipment lending, and distribution of local, original video productions on the Internet.

Most importantly, anyone in our region, in Vermont or even around the world who has Internet access can see our programs through links on our website: http://www.gnat-tv.org. We invite you to go there to see the quality and breadth of our community service.

We have already embraced the Internet as an essential partner in serving our community, but increasingly we will need to rely on it more to replace the funding we'll be losing from the cable operator's TV revenues as more and more people watch their video on the Internet and drop their cable TV subscriptions. Please maintain PEG Access funding and distribution on the Internet and all commercial video service providers.

Sincerely,

Annie Bessette

GNAT Board Member
Londonderry, VT resident

Annie Bessette
TPW Principal Broker
TPW Real Estate

[redacted]

[redacted]

www.TPWrealestate.com
www.tpw.com